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California's Coast: The Struggle Today – A Plan for Tomorrow (Part I)

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CALIFORNIA'S COAST: THE STRUGGLE TODAY—A PLAN FOR TOMORROW

PETER M. DOUGLAS

JOSEPH E. PETRILLO

PART I

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CALIFORNIA'S COAST: THE STRUGGLE TODAY—A PLAN FOR TOMORROW

PETER M. DOUGLAS*

JOSEPH E. PETRILLO†

PART I

This is our children's house
And they wait outside the door
They're listening to our voices
And learning what we think we're here for.

Do we know and can we tell them

We must repair somehow
Or be haunted by our children's cry.

. . . .

For we are living in our children's house
And they will follow only if they can.

—Toni Brown‡

I. INTRODUCTION

California's coast, like coastlines everywhere, means many things to many people. The coast is a place where people live, play, work and learn. It is a place where nearly every problem involved in land use planning and management can be found. Much of California's economic and social life is concentrated on or near its shoreline.¹ Its finite re-

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The authors wish to extend their deepest appreciation to Chris Jacobson, without whose skills, suggestions, extra effort, patience, commitment to the subject, and encouragement, this undertaking would not and could not have been accomplished.

This is the first installment of a two-part article. The second part will appear in volume 4, issue number 3.

‡ "Children's House" (1970) (sung by Joy of Cooking, Capital Records ST-661).

1. Almost 85% of California's 21 million people live within 30 miles of the Pacific shoreline. CALIFORNIA COASTAL ZONE CONSERVATION COMM'NS, CALIFORNIA COASTAL PLAN 79 (1975) [hereinafter cited as COASTAL PLAN].

A major portion of nearly every sector of California's economy is located within the state's 15 coastal counties (excluding the five counties adjacent to San Francisco Bay). Approximately two-thirds (65%) of California's economy is concentrated in these

sources are being subjected, with ever increasing intensity, to conflicting and often mutually exclusive demands. The pressures put on coastal resources have stressed many of them to the point of destruction or depletion. To protect these limited resources for the benefit of current and future generations, California, in late 1972, initiated a coastal resources planning and management program that is recognized as a pioneering venture in this country.

California's coastal program has reached a critical stage—legislative implementation of the California Coastal Zone Conservation Plan that was nearly two and one half years in the making. It is too early to say what the outcome of the legislative deliberations will be. But whatever the result, California's experience to date offers useful lessons for other jurisdictions contemplating coastal resources management programs.

II. A BRIEF HISTORICAL PERSPECTIVE

The uniqueness and importance of California's 1,072 miles of mainland coastline and more than 387 miles of offshore island shore received legislative recognition as early as 1931.² Little was done, however, to effectively involve the state in managing and planning for the conservation and use of these resources until the 1960's.³

In 1969 concern for the preservation of San Francisco Bay resulted in the creation of the San Francisco Bay Conservation and Development Commission (BCDC).⁴ Factors such as rapid filling, loss of the bay through diking, deteriorating water quality, and restricted access, also played a role.⁵ Successful enactment of legislation to establish BCDC is attributable, in part, to the restriction of its objectives to the protection of an easily identifiable set of resources within a geographically limited area. The BCDC has functioned well and has been relatively successful in achieving the goals of its enabling legislation. As a result, BCDC can be viewed as a test case and as a model for the statewide approach to coastal resources planning and management.

counties. As a percentage of the California total this breaks down as follows: 20% of the land area; 63% of the population; 66% of civilian employment; 73% of employment in manufacturing; 66% of personal income; 63% of taxable sales by retail stores; 70% of bank deposits; 76% of savings and loan association savings' balances; 63% of assessed property value; and 61% of valuation of building permits. SECURITY PACIFIC BANK RESEARCH DEPT., CALIFORNIA COASTAL ZONE ECONOMIC STUDY: AN AREA PROFILE 3-11, 4-1, 5-1, 6-5, 7-1, 11-1 (1975) (all figures rounded to nearest whole number).

2. JOINT LEGISLATURE COMM. ON SEACOAST CONSERVATION, REPORT TO THE LEGISLATURE (Cal. Assembly J., Jan. 19, 1931 at 461-62).

3. See F. Doolittle, *Land Use Planning and Regulation on the California Coast: The State Role* 1 (Institute of Governmental Affairs, Univ. of Cal., May 1972).

4. See R. ODELL, *THE SAVING OF SAN FRANCISCO BAY* 98 (1972).

5. See generally R. ODELL, *THE SAVING OF SAN FRANCISCO BAY* (1972).

Inspired by the successful citizen effort to protect San Francisco Bay through creation of the BCDC, conservationists in 1970 shifted their attention to the Pacific littoral.⁶ The methods used to deal with the problems of San Francisco Bay were readily transferable to California's long ocean coastline.⁷

Efforts to enact statewide legislation modeled after the BCDC failed in three successive sessions of the legislature (1970-72),⁸ but were partially successful in their effect. Citizen organizations, the news media, and the general public became increasingly involved in active campaigns for coastline protection legislation. The momentum gathered during these years proved particularly well-suited for application to the California initiative process.⁹ Frustrated citizen groups turned to the voters of California and in a remarkably short period of time, qualified a measure for the November 1972 general election that was much stronger than its legislative predecessors had been.¹⁰ After an extremely expensive and emotion-charged campaign, the initiative proposal, Proposition 20, passed by a 55.1 percent margin.

The reasons underlying the public movement on behalf of coastline protection legislation are complex and defy precise description. However, several key factors can be identified.

One factor was undoubtedly an increasing public concern about urban sprawl, population growth, and deterioration of the quality of the environment. The concern about growth involved something nearly everyone can sense but few can explain: the psychological dislocations generated by the increasing rapidity of change in living conditions and styles.¹¹

Another factor was the recognition that land (especially coastal land) and other resources are finite and that the pressures of competing demands in an unrestricted market system are threatening their per-

6. See Adams, *Proposition 20—A Citizens' Campaign*, 24 SYR. L. REV. 1019 (1973).

7. The elimination by a private developer of public access to more than 10 miles of scenic Sonoma County shoreline north of San Francisco prompted many state legislators to advocate strong statewide coastal management legislation. See *Hearing on the Public Interest in the Shoreline Before the Conservation and Beaches Subcomm. of the Cal. Assembly Comm. on Natural Resources, Planning, and Public Works* 116-23 (Oct. 11, 1968); Doolittle, *supra* note 3, at 16.

8. See Doolittle, *supra* note 3, at 43-72.

9. CAL. CONST. art. IV, § 22. See W. CROUCH, *THE INITIATIVE AND REFERENDUM IN CALIFORNIA* (1950); Comment, *The Scope of the Initiative and Referendum in California*, 54 CALIF. L. REV. 1717 (1966).

10. See generally Adams, *supra* note 6.

11. See F. BOSSELMAN & D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROLS* (1971); A. TOFFLER, *FUTURE SHOCK* (1970); *THE USE OF LAND: A CITIZEN'S POLICY GUIDE TO URBAN GROWTH* (W. Reilly ed. 1973).

manent loss to the public. Although millions of Californians come to the coast each year in search of some form of relaxation and recreation, coastal recreational opportunities have been inadequate, both in terms of quantity and quality, to meet the demand.¹² Urban development pressures and the effects of outmoded property and inheritance tax systems have caused the loss of irreplaceable scenic coastal areas and have forced the conversion of relatively undeveloped coastal lands, including prime agricultural lands, to high density and intensity uses. The resulting changes have been highly visible, especially on California's coast. Primary and secondary roads parallel approximately 800 miles of the coast and one can view most of this shoreline directly from an automobile. This high visibility factor provides a ready image of the objective of coastline protection legislation.

The perception that existing governmental structures were unable to deal adequately with the problems inherent in the management of coastal resources may have been another variable. Historically, land use controls have been left to the local level of government. Local governments, however, have been unable to contend with the land use pressures of a rapidly urbanizing nation. Many uses of land have significant impacts on the environment, the economy, and the quality of life beyond the jurisdictional borders of counties and municipalities. This fact, coupled with the proliferation of governmental decision-makers affecting the coast,¹³ underscored the need for a state level agency with perspective and legal authority to guide resource use decisions having extralocal implications. Many proponents recognized that Proposition 20 would create yet another layer of government. But they saw in it a way to bring order to the decisionmaking process and to assure that land use controls would be exercised on a coordinated, comprehensive basis, with consideration being given to the full range of impacts of such decisions. It was anticipated that this process would eventually have to be refined and rendered efficient and nonduplicative. There was also a recognition that it would have to be made responsive to local needs while assuring protection of regional, state, and national interests in the coastal zone.

12. Of California's 1,072 miles of mainland coastline, only about 263 miles were legally available for public access in 1972. CALIFORNIA DEP'T OF PARKS AND RECREATION, CALIFORNIA COASTLINE PRESERVATION AND RECREATION PLAN 16 (1971).

13. In mid-1972 California's Pacific coastline was subject to the jurisdiction of 15 counties, 42 cities, 42 state and some 70 federal agencies. See J. GAMMAN, S. TOWERS & J. SORENSON, *STATE INVOLVEMENT IN THE CALIFORNIA COASTAL ZONE: A TOPICAL INDEX TO AGENCY RESPONSIBILITY* (1974); J. GAMMAN, S. TOWERS & J. SORENSON, *FEDERAL INVOLVEMENT IN THE CALIFORNIA COASTAL ZONE: A TOPICAL INDEX TO AGENCY RESPONSIBILITY* (1974).

Another reason for sensitivity to the failures of the then existing system was that some, though not all coastal resources were subject to constitutional protection under the public trust doctrine.¹⁴ Resources such as beaches above the mean high tide line and other areas near the coast, although not covered by the public trust doctrine, were popularly viewed as being worthy of protection for the benefit of all the people, including those who live outside the jurisdiction of the governmental units in control of coastal land use. These units of local government, although having no legal obligation under the public trust doctrine, were nevertheless perceived to be trustees of a magnificent public resource. In 1972 there existed a general consensus that this "trust" had been misplaced and poorly managed.

Yet another factor was the growing public awareness of the need to protect and enhance the biological productivity of the coastal marine environment. The adverse effects of human activities on the marine environment have been brought to the public's attention in several forceful ways, including dramatic accidents.¹⁵ Once abundant species of marine life important to commercial and sport fisheries have been seriously depleted and in some cases destroyed by pollution. Natural sand transport processes have been interrupted by the construction of harbors, marinas, dams, and other artificial structures, resulting in the erosion of beaches. A variety of projects have caused the loss of wetlands and estuaries which once provided both recreational opportunities

14. See Eikel & Williams, *The Public Trust Doctrine and the California Coastline*, 6 URBAN LAW. 519 (1974).

15. See CALIFORNIA DEP'T OF NAVIGATION AND OCEAN DEVELOPMENT, CALIFORNIA COMPREHENSIVE OCEAN AREA PLAN (1972); IMPINGEMENT OF MAN ON THE OCEANS (D. HOOD ed. 1971); W. MARX, *THE FRAIL OCEAN* (1967); *THE WATER'S EDGE: CRITICAL PROBLEMS OF THE COASTAL ZONE* (B. Ketchum ed. 1972).

The impact of ocean dumping practices is still not fully appreciated or understood. It has been reported that the specter of disaster hangs over New York's coastline. The dumping of sewage sludge in the Atlantic during the past 45 years has created a 20-square-mile seabed layer of toxic sludge which has killed or contaminated all forms of life in the area. Originally located 12 miles offshore, this "Dead Sea goo" is reported to be moving toward the coastline at the approximate rate of 1 mile per year. W. MARX, *THE PROTECTED OCEAN* 49 (1972); Soucie, *Here Come de Sludge*, AUDUBON, July 1974, at 108, 110. The full impact of this activity on east coast marine resources will never be known.

The effects of ocean pollution from sewage outfall systems on California's coastline were obvious by the mid-1960's even to the lay person. Memories of the Santa Barbara oil spill of 1969 and the *Torre Canyon* disaster of March 1967 were also still vivid to the proponents of Proposition 20. The Santa Barbara blowout covered some 800-square-miles of ocean near the shore and 30 miles of beaches with crude oil. LIFE, Feb. 14, 1969, at 30; LIFE, Feb. 21, 1969, at 58. The *Torre Canyon* wreck dumped some 30 million gallons of crude oil into England's coastal waters. R. EASTON, *BLACK TIDE: THE SANTA BARBARA OIL SPILL AND ITS CONSEQUENCES* 40 (1972).

and valuable wildlife habitat.¹⁶ The combination of these factors served to dramatize the need for state action.

III. THE CALIFORNIA EXPERIENCE

On September 18, 1975, the California Coastal Zone Conservation Plan [hereinafter referred to as the Coastal Plan or the Plan] was unanimously adopted by the 12-member California Coastal Zone Conservation Commission.¹⁷ Based on input from thousands of individuals and organizations, the Coastal Plan can well be viewed as the product of one of the most ambitious experiments in participatory land use planning ever attempted in this country. The Plan's scope is broad, covering nearly every issue raised by the conflict between the need to use coastal resources and the need to conserve them.

Many persons felt in December 1972 that the mandate of Proposition 20, or more properly the law enacted by the proposition, the California Coastal Zone Conservation Act of 1972¹⁸ [hereinafter referred to as the Coastal Act or the Act], could not be met within its time constraints. The deadline, however, was met. The Coastal Plan was completed in less than 2½ years and was submitted as required to the California Legislature for implementation in December 1975.¹⁹ The achievement is made more remarkable by the fact that at the same time the planning was being done, nearly every proposed development along the coast had to pass through the regulatory process established by Proposition 20—a process administered by the same persons doing the planning.²⁰

In the following sections this article will describe California's 3 years of experience under this coastal zone management system.

A. *The California Coastal Zone Conservation Act of 1972—Proposition 20*

Proposition 20 was enacted by vote of the people on November 7, 1972. Several of the fundamental principles on which the Coastal Act is predicated have been mentioned above²¹ or are discussed more fully

16. Of the approximately 381,000 acres of coastal marshes and mudflats in California in the year 1900, only about 126,000 acres remained in 1971—a 67% reduction. G. BAILEY & P. THAYER, CALIFORNIA'S DISAPPEARING COAST: A LEGISLATIVE CHALLENGE 15 (1971).

17. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 17 (Sept. 16-18, 1975).

18. CAL. PUB. RES. CODE §§ 27000-650 (West Supp. 1975).

19. CAL. PUB. RES. CODE § 27320(c) (West Supp. 1975).

20. CAL. PUB. RES. CODE § 27400. (West Supp. 1975).

21. See notes 11-16 and accompanying text *supra*.

elsewhere.²² In order to better understand the wide scope and unique nature of California's coastal program, these basic principles should be kept in mind.

1. *An Overview.*—Proposition 20 created one statewide²³ and six regional coastal commissions,²⁴ varying in size from 12 to 16 members. The 72 regional commission membership positions are equally divided between locally elected officials and public members. Public members are appointed in equal numbers by the Governor, the Senate Rules Committee and the speaker of the Assembly.²⁵ Locally elected officials are appointed by a variety of methods.²⁶ The statewide commission [hereinafter referred to as the State Commission] is composed of 12 members, six of whom are public members selected in the same manner as are public members of the regional commissions; the remaining six consist of one member from each of the six regional commissions, selected by each commission.²⁷

The Coastal Act gave the seven coastal commissions the task of preparing "a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone."²⁸ This plan, the Coastal Plan, was to be prepared "in full consultation with all affected governmental agencies, private interests, and the general public."²⁹ The area for which this plan was to be prepared was termed the "coastal zone" and defined as the land and water area from Oregon to Mexico, extending seaward to the state's outer jurisdiction (3 miles), including the islands subject to California's jurisdiction, and extending landward from the mean high tide line to the "highest elevation of the nearest coastal mountain range," except in the three southern counties, where the inland boundary is either the highest elevation or 5 miles, whichever is shorter.³⁰

22. See Douglas, *Coastal Resources Planning and Control: The California Approach*, 5 ENVIRONMENTAL LAW 741, 745-748 (1975); Adams, *supra* note 6, at 1019-46.

23. CAL. PUB. RES. CODE § 27200 (West Supp. 1975).

24. CAL. PUB. RES. CODE § 27201 (West Supp. 1975). The six regional commissions are: the North Coast Regional Commission (Del Norte, Humboldt, and Mendocino Counties); the North Central Coast Regional Commission (Sonoma, Marin, and San Francisco Counties); the Central Coast Regional Commission (San Mateo, Santa Cruz, and Monterey Counties); the South Central Coast Regional Commission (San Luis Obispo, Santa Barbara, and Ventura Counties); the South Coast Regional Commission (Los Angeles and Orange Counties); and the San Diego Coast Regional Commission (San Diego County).

25. CAL. PUB. RES. CODE § 27202(d) (West Supp. 1975).

26. CAL. PUB. RES. CODE §§ 27201(e)(2), (f)(2); 27202(a), (b), (c) (West Supp. 1975).

27. CAL. PUB. RES. CODE §§ 27200(a), (b) (West Supp. 1975).

28. CAL. PUB. RES. CODE § 27001(b) (West Supp. 1975).

29. *Id.*

30. CAL. PUB. RES. CODE § 27100 (West Supp. 1975). Applying this definition, the

The Coastal Act required that each regional commission make plan recommendations to the State Commission,³¹ which was to adopt a coastal plan and submit it to the legislature for implementation.³² The State Commission was also given responsibility for promulgating a planning methodology for use by the regional commissions.³³ During 1976, while the legislature is determining how to implement the Coastal Plan, the commissions continue in existence carrying on their regulatory functions. Unless the legislature provides otherwise in 1976, the commissions will expire on January 1, 1977, and the provisions of Proposition 20 will be repealed.³⁴

Between February 1, 1973, and January 1, 1977, the commissions are given authority to exercise strong regulatory controls over virtually every type of proposed coastal development activity.³⁵ Activities requiring coastal permits are broadly defined.³⁶ Permit requirements apply in the "permit area," a portion of the coastal zone extending from the state's seaward jurisdiction inland 1,000 yards from the mean high tide line of the "sea."³⁷ The permit area is expanded to include a band 1,000 feet wide around a body of water any portion of which lies within the general 1,000 yard permit area.³⁸ Provision is made for exclusion from the permit area of urbanized, extensively developed areas if specific conditions are met, but no significant use changes can be made in such locales without a coastal permit.³⁹ Determination of the exact boundaries of the permit area is left to the regional commissions.⁴⁰ The Act is silent as to whether a determination of the permit area boundary may be appealed to the State Commission.⁴¹

commissions found that the planning area extended inland approximately 5 miles along the entire coast with a few exceptions where gaps in the coastal mountain range resulted in a boundary being drawn further inland.

31. CAL. PUB. RES. CODE § 27320(b) (West Supp. 1975).

32. CAL. PUB. RES. CODE § 27320(c) (West Supp. 1975).

33. CAL. PUB. RES. CODE § 27320(a) (West Supp. 1975).

34. CAL. PUB. RES. CODE § 27650 (West Supp. 1975).

35. CAL. PUB. RES. CODE § 27400 (West Supp. 1975).

36. CAL. PUB. RES. CODE § 27103 (West Supp. 1975).

37. CAL. PUB. RES. CODE §§ 27104, 27106 (West Supp. 1975). The definition of "sea" caused problems by failing to make clear whether bodies of water that are only seasonally connected to the Pacific Ocean are part of the "sea." Some regional commissions argued that a permit area of only 1,000 feet should be applied to these bodies of water.

38. CAL. PUB. RES. CODE § 27104(b) (West Supp. 1975).

39. CAL. PUB. RES. CODE § 27104(c) (West Supp. 1975). In practice this provision has proven to be so strict that very few areas have qualified for exclusion.

40. CAL. PUB. RES. CODE § 27104(d) (West Supp. 1975).

41. One court has ruled that the State Commission lacks jurisdiction to hear such an appeal. *Middletown Homeowners Ass'n v. San Diego Coast Regional Comm'n*, No. 340460 (San Diego Super. Ct., April 24, 1973), *appeal dismissed*, 4 Civil No. 12774 (Cal. 4th Dist. Ct. App., Jan. 7, 1974).

A coastal permit may be issued only if a proposed development "will not have any substantial adverse environmental or ecological effect," and if it is consistent with the objectives of the Act.⁴² Regional commission permit decisions may be appealed to the State Commission by the applicant or by any person "aggrieved" by approval of a permit.⁴³ The State Commission may refuse to hear appeals that it determines raise "no substantial issues."⁴⁴ Those it hears must receive a de novo hearing and must be voted on in the same manner and by the same vote total as is required at the regional level.⁴⁵ The applicant has the burden of proof on all issues at both the regional and the state (appellate) levels.⁴⁶ Additionally, the applicant must secure, at both levels, at least a majority vote of the total authorized membership of the appropriate commission.⁴⁷ Provision is made for issuance of emergency permits and administrative permits for de minimis types of development by the commissions' executive directors.⁴⁸ Judicial review of commission decisions is available.⁴⁹

"Any person" may go to court for injunctive relief and recovery of civil penalties for the violation of any provision of the Act.⁵⁰ No bond is required, and violators are subject to a \$10,000 fine.⁵¹ Unauthorized developments are punishable by an additional fine of \$500 for each day of continuing violation.⁵²

42. CAL. PUB. RES. CODE § 27402 (West Supp. 1975). The objectives of the Act are set forth in § 27302 and include:

- (a) The maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.
- (b) The continued existence of optimum populations of all species of living organisms.
- (c) The orderly, balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.
- (d) Avoidance of irreversible and irretrievable commitments of coastal zone resources.

CAL. PUB. RES. CODE § 27302 (West Supp. 1975). It should be noted that these objectives refer to the "coastal zone" and are not limited to the "permit area." This is an important point.

43. CAL. PUB. RES. CODE § 27423(a) (West Supp. 1975).

44. CAL. PUB. RES. CODE § 27423(c) (West Supp. 1975).

45. *Id.*

46. CAL. PUB. RES. CODE § 27402 (West Supp. 1975).

47. CAL. PUB. RES. CODE §§ 27400, 27401 (West Supp. 1975). A two-thirds vote of approval is required for specified activities such as dredging and filling, and for developments that would reduce public access to the water's edge or that would reduce the size of any beach or area otherwise usable for public recreation.

48. CAL. PUB. RES. CODE § 27422 (West Supp. 1975).

49. CAL. PUB. RES. CODE § 27424 (West Supp. 1975).

50. CAL. PUB. RES. CODE §§ 27425-26 (West Supp. 1975).

51. CAL. PUB. RES. CODE §§ 27425, 27500 (West Supp. 1975).

52. CAL. PUB. RES. CODE § 27501 (West Supp. 1975).

In addition to its other requirements, the Act contains strong conflict of interest provisions. Violations are felonies and are punishable by imprisonment in the state prison.⁵³

Proposition 20 appropriated a total of \$5 million to the state commission for the planning and operational expenses of all seven commissions for the 4-year work program.⁵⁴

2. *The Commission Structure.*—During the formative stages of the California program, one of the most controversial issues was what type of governmental structure would be most appropriate to carry out the program.⁵⁵ Representatives of local government were divided on the question of whether a state level mechanism was needed. The counties argued that local governments could do the job if provided with statewide standards and goals and the necessary resources. The League of California Cities took a more flexible position and recognized that some type of state level involvement in coastal resource management was needed to handle proposed development activities having extralocal impact. At the same time, the cities urged that most land use control responsibilities remain within the discretion of local governments. Many cities later supported Proposition 20 as a mechanism by which they could influence land use decisions with spillover effects on their own jurisdictions.⁵⁶

The prevailing view was that some form of state instrumentality having both regulatory and planning functions was necessary. The debate then focused on whether the proposed state agency should be full-time, part-time, or a mix; whether its members should be many or few, appointed or elected; and whether there should be regional bodies and, if so, how they should relate to the statewide body. Many seasoned legislators and their staffs favored a small, full-time commission without regional boards.⁵⁷ The Proposition 20 approach was finally developed by using BCDC and the State Water Resources Control Board with its nine regional boards⁵⁸ as models and using features of both.

53. CAL. PUB. RES. CODE §§ 27230-34 (West Supp. 1975).

54. California Coastal Zone Conservation Act of 1972 § 4 (Nov. 7, 1972).

55. See generally Doolittle, *supra* note 3. This issue has again emerged as a major point of contention during the current legislative deliberations on how to implement the Coastal Plan.

56. See San Francisco Examiner, Sept. 12, 1975, at 31, col. 1. After the passage of Proposition 20 some local governments with newly elected governing bodies also asked the commissions to deny previously authorized coastal permits for developments within their own jurisdictions.

57. These issues were debated at length during the legislature's deliberations on Proposition 20's unenacted predecessors.

58. CAL. WATER CODE §§ 13000-998 (West Supp. 1975).

Regional commissions were considered necessary for several reasons. It was believed that public participation in the permit process could be accomplished more effectively by regional commissions, which were seen as more accessible, more visible, and better able to identify and respond to local and regional needs. This was important because the diversity of California's long shoreline is one of its most fascinating features and must be provided for if planning for the coast is to be successful.⁵⁹ The diversity that is California's coast includes a northern coastal region which has a sparse population; an economy largely dependent on fishing, agriculture (mostly timber related) and tourism; and a moist, cool climate. The southern coast, by contrast, is warm, essentially arid; highly urbanized; and heavily populated, with extremely high demands for residential uses along the coastline. Its economy is concentrated in industrial, commercial, and service oriented activities. The mid-coast region is a mixture of north and south, with increasing pressures for urbanization spreading south from the San Francisco Bay area and north from the Los Angeles metropolitan region. Regional commissions whose work would be channeled through a statewide entity were thought better able to cope with this wide variety of socio-economic, natural resource, and land use problems.

Regional commissions would also, it was assumed, be best suited to respond to regional differences in philosophy, values, and needs in the planning process.⁶⁰ A proper balance and perspective could be

59. See G. BAILEY & P. THAYER, *supra* note 16, at 1-7; CALIFORNIA DEPT OF NAVIGATION AND OCEAN DEVELOPMENT, CALIFORNIA COMPREHENSIVE OCEAN AREA PLAN (1972).

The following figures dramatically show the differences among coastal counties as to physical characteristics and other factors important for planning purposes. Regarding public ownership (not synonymous with access) of the coastline, the statistics representing percentage of public ownership are: San Francisco County—92%; Marin County—84%; Orange County—58%; Monterey County—46%; Los Angeles County—43%; Santa Cruz County—33%; Mendocino County—18%. There are also striking differences among counties in the percentages of population in the coastal zone (the planning area). Five counties north of San Francisco, with 39% of the total coastline mileage, account for under 3% of total state population in coastal areas; three southernmost counties, with 18% of the coastline, contain 72% of the total planning area population. Planning area population growth rates also vary significantly. Nine central and northern counties have contributed less than 11% of recent total state growth in the coastal zone (1970-74). The six southernmost coastal counties accounted for 89% of the increase. Orange and San Diego counties alone accounted for over 72% of the total population growth. As to the number of persons residing in the planning area per mile of coastline, the respective figures are: San Francisco County—29,400; Los Angeles County—21,600; Orange County—15,800; San Diego County—12,900; Santa Cruz County—3,000; Del Norte County—250; Marin County—220; Sonoma County—60. CALIFORNIA COASTAL ZONE ECONOMIC STUDY, *supra* note 1, at 2-1, 3-3, 3-10 (figures rounded to nearest whole number).

60. Actual practice has shown the legislative assumption to be valid. The vastness of the north coast region and the heavy vote there against Proposition 20 have made planning for that area more difficult than had been anticipated. On the other hand, the permit workload there has been much lighter than anywhere else.

achieved through regional representation on the State Commission on an equal basis with public members appointed to represent the state as a whole. Local government perspective was provided through representation by local officials on the regional commissions. Although local representation was not required at the state level, it in fact occurred when several regional commissions selected a local government member to sit on the state body.⁶¹

Though diversity was a major consideration, the need for uniformity in both the planning and the permit processes was considered to be equally important. The Coastal Act dealt with this by placing at the state level the responsibility for the budgets of all seven commissions,⁶² the promulgation of planning methodology, the adoption of rules and regulations for the processing of permits by all the commissions, and the handling of permit appeals from the regions.⁶³ The State Commission was required to adopt the Coastal Plan and to submit it to the legislature,⁶⁴ while the regional commissions were given no role in this part of the process. The state body also submits annual progress reports on the entire program to the Governor and the legislature.⁶⁵

In early 1971, some persons argued that the State Commission's role in coastal planning should be limited to aggregating regional plans adopted by the regional commissions. This approach would have reduced the state body to an arbiter of conflicts among regional plans, and ignored the very real possibility of a regional commission balking and refusing to adopt a regional plan.⁶⁶ It also failed to recognize both the need for a statewide perspective and the difference in the dynamics of the process, depending on whether responsibility for adopting a state plan by a given date was vested at the state level or at the regional level. These concerns, coupled with the need to have one body accountable if deadlines were not met, led to the State Commission's being given the affirmative duty of adopting the Plan. There can be little doubt that this feature was the primary reason for the completion of the Coastal Plan on time.

The permit appeal process is one of the most important features

61. Three of the six regions chose local government members in the first instance. The number of locally elected officials on the State Commission has fluctuated, and as of late 1975 stood at two.

62. California Coastal Zone Conservation Act of 1972 § 4 (Nov. 7, 1972).

63. CAL. PUB. RES. CODE §§ 27320(a), 27420(a), 27423 (West Supp. 1975).

64. CAL. PUB. RES. CODE §§ 27300, 27320(c) (West Supp. 1975).

65. CAL. PUB. RES. CODE § 27600 (West Supp. 1975).

66. This concern proved to be justified. Several regions voiced strong objections to the State Commission's planning approach and would probably have refused to do the job in the absence of the threat that if the regions did *not* do it the State Commission would.

of California's program. Because both a *de novo* hearing and an affirmative vote by the same majority as necessary at the regional level are required, the State Commission determines appeals by applying the permit standards set forth in the Act and not by reviewing the correctness of the regional decision. This approach minimizes conflict with the regions and provided another level of development control during the time the Coastal Plan was being prepared. It also brings into play a host of considerations different from those that would have prevailed had the State Commission been limited to reviewing the issues raised by, and the information available to, the regional commissions. Thus the State Commission is in a better position to promote uniformity in permit decisions, to apply evolving planning policies which may not have been considered by all the regional commissions, and to take a fresh look at a development proposal with the regional commission's record serving as simply another information input.⁶⁷ In practice the State Commission has given considerable weight to actions by the regions, both in planning and permit matters, while at the same time not allowing itself to be bound by those actions.

The composition of the commissions and the qualifications of their members were hotly debated issues during the legislative hearings on the unenacted predecessors of Proposition 20.⁶⁸ Should members be elected or appointed and if appointed, how and by whom? Should locally elected officials serve, and if so, in what proportion to the total membership? Should special interests or areas of expertise be represented? Should members serve full-time or part-time? It was agreed that membership, at least on the regional bodies, should be divided equally between locally elected officials and public members. At one point locally elected officials were even given a majority.⁶⁹ Proposition 20

67. The value of the "fresh look" has been demonstrated many times. In one case the Coast Guard proposed construction of a sewage treatment facility, which the regional commission approved. On appeal, the State Commission denied the permit because alternative sites had not been adequately considered. As a result, alternatives were sought, and a more suitable site was located. The executive director of the regional commission wrote the State Commission that

In hindsight, I think we have here a good example of the way in which the Regional and State independent reviews complement each other. From our prior contacts, we had developed a very positive opinion of the competency, sensitivity and responsibility of the [applicant]. Therefore, when we reviewed their earlier analysis [w]e were not stimulated to undertake an extensive second-guess effort

The State Commission, however, had formed no such positive impression Accordingly, you performed a more extensive review and asked questions about a wider variety of alternative site locations than we had.

Letter from Michael L. Fischer to Joseph E. Bodovitz, March 18, 1975.

68. See generally Doolittle, *supra* note 3.

69. Cal. Assembly 1471 § 27201 (1971); Cal. Assembly 200 § 27201 (1972).

returned to providing an equal number of each.⁷⁰ The primary reason locally elected officials were given representation was that local governments were perceived as being closer to the people and as having valuable perspectives that should be made part of the coastal resources planning process, even though local governments had not done an adequate job managing coastal resources in the past. Giving them equal representation was simply a matter of political judgment.

Because of the equal representation given local government on the regional commissions and the total number of commissioners involved, part-time service was adopted.⁷¹ It was also felt that commissioners serving on a part-time basis would retain a better sense of community values and would be better able to make objective judgments than would full-time members.⁷²

With any new governmental program the caliber of persons selected to implement the program is much more important than how well the enabling statute is drafted. To assure that the letter and spirit of the Coastal Act would be carried out, much thought was devoted to the questions of selection and qualifications of members. Spelling out the qualifications a person should bring to the task was easy; making sure they were met was another matter. It was finally agreed that public members should be persons who are knowledgeable about planning issues, who have had some experience in the area of resource management or planning, and most importantly, who have a lot of common sense. Special interest representation was rejected in favor of requiring a very general knowledge of the subject area.⁷³ To

70. When Proposition 20 was being drafted there was considerable support for the exclusion of locally elected officials altogether.

71. Even though regional commissioners serve only part-time, demands on commissioners who were also locally elected officials proved to be so great that the Coastal Act was amended to allow members who are supervisors from the most populous counties to appoint alternates to serve in their stead when they could not attend meetings. CAL. PUB. RES. CODE § 27203 (West Supp. 1975).

72. Many people were concerned that full-time commissioners would be "captured" by the interests they were supposed to regulate and would become preoccupied with perpetuating their positions. The cost of full-time versus part-time commissioners was also a factor. On the other hand, concern was expressed that part-time members would not be able to do as thorough a job and would become overly influenced by the members of their staffs. Experience has shown that, while commissioners have not always been well prepared, they have not been "captured" by their staffs. It has been suggested that, in light of the heavy workload involved in preparing for meetings, commissioners should be paid for their preparatory work and/or be granted expenses plus \$100 per meeting, instead of the current payment of expenses plus \$50 per meeting. CAL. PUB. RES. CODE § 27223 (West Supp. 1975).

73. The Act states that each public member "shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information, to appraise resource uses in light of the policies [of the Coastal Act, and] to be responsive to the scientific, social, esthetic,

enhance the chances that persons supportive of the Coastal Act would get on the commissions, appointment responsibility was divided equally among the Governor, the Senate Rules Committee, and the Speaker of the Assembly. It was hoped that the knowledge requirement would be a guide and a constraint to prevent the selection of persons who had shown no demonstrable interest, awareness, or sensitivity in the natural resource planning area. This was generally thought to be the most feasible approach.⁷⁴ The knowledge requirement does not apply to locally elected officials who must simply have been elected to the governing body of a city or county. Their terms as commissioners cease when their terms as locally elected officials end.⁷⁵ On the other hand, the Coastal Act would not prevent a locally elected official who also meets the knowledge requirement from being appointed as a public member.⁷⁶ Thus the Act does not, theoretically at least, preclude locally elected officials from constituting a majority of a regional commission.⁷⁷

Public members need not be residents of a particular region or even of the state. No provision regarding residence was written into Proposition 20 on the assumption that, as a practical matter, non-Californians would not be appointed. With respect to the regional commissions, the option of appointing an inland resident or a resident of another region was intentionally left open.⁷⁸ Regional residency was assured in any event by virtue of local government representation.

Although the Act is silent on the point, many persons who participated in the drafting of Proposition 20, including one of the present authors,⁷⁹ intended public member appointments to be for the 4 year duration of the planning and permit program. The perceived needs to insulate commissioners from political pressures and to provide for continuity in planning and permit decisions were major argu-

recreational, and cultural needs of the state." CAL. PUB. RES. CODE § 27220 (West Supp. 1975).

74. On the whole, proponents of Proposition 20 were pleased with the 36 public members appointed in December 1972, and to date no legal challenge has been made. See Healy, *Saving California's Coast: The Coastal Zone Initiative and Its Aftermath* 1 COASTAL ZONE MANAGEMENT J. 365 (1974).

75. CAL. PUB. RES. CODE § 27222 (West Supp. 1975).

76. A recent opinion by the attorney general, however, concludes that by virtue of the "doctrine of incompatible offices," and not because the Act itself prevents it, a public member cannot also be a locally elected official. 1975 CAL. ATT'Y GEN. OP. SO 75/52. See also 1975 CAL. ATT'Y GEN. OP. SO 75/20 IL, reaching the same conclusion with respect to alternate members.

77. This occurred on the South Coast Regional Commission when Governor Reagan appointed a Long Beach city councilman as a public member.

78. Ironically, the only inland commissioner appointed to a region was a Council of Government representative who was a locally elected official from a city outside the coastal zone.

79. Peter M. Douglas.

ments for term appointments extending the entire 4-year life of the Act. On the other hand, it was thought that greater accountability would result if commissioners served the pleasure of the appointing authority. The same concerns applied to locally elected officials and to regional representatives to the State Commission. For more than 2 years it was assumed that commission positions were term appointments.⁸⁰ With the election of a new governor and of new majorities to several local governments, the question was raised anew. The attorney general then issued a written opinion concluding that, under California law,⁸¹ unless the enabling statute creates a term of office, appointees serve at the pleasure of the appointing authority. Since the Coastal Act neither directly nor indirectly created such a term, this interpretation applied to the coastal commission members.⁸² The replacement of several commissioners by newly elected Governor Brown was challenged and an appeal was taken to the California Supreme Court. The court agreed with the attorney general that coastal commissioners serve at the pleasure of the appointing authority.⁸³ Although this newly discovered power has been infrequently used,⁸⁴ a few noticeable changes in voting patterns on permit matters have occurred. The overall effect of this decision on the planning program, however, has been minimal.

Though the coastal commission structure has worked well, it could have been improved in several ways. For example, the relationship between the regional commissions and the state body should have been more clearly defined in the statute.⁸⁵ Considerable time and energy was expended orchestrating the work program of the six semi-autonomous regions—time that could have been better spent. The problem stemmed primarily from the uncertainty of the drafters of the Coastal Act as to which of several more specific approaches would work best. Some who argued for a stronger, more specifically delineated state role were at the same time concerned about what might happen if the members of the state body turned out to be persons lacking

80. The attorney general's office had advised the commission, in an oral opinion, that this was the case.

81. CAL. GOV'T CODE § 1301 (West 1966).

82. 1975 CAL. ATT'Y GEN. OP. SO 74/56 IL.

83. *Brown v. Superior Court*, 538 P.2d 1137 (Cal. 1975).

84. As of October 1975 the Governor had replaced three commissioners, and the supervisors of San Diego had replaced their representatives to the regional commission.

85. Section 27240 of the California Public Resources Code sets out powers and duties that apply *equally* to the state and regional commissions. Thus, for example, the state body or any regional body may "[a]dopt any regulations or take any action it deems reasonable and necessary to carry out the provisions of this division" CAL. PUB. RES. CODE § 27240(d) (West Supp. 1975) (emphasis added).

commitment to the goals of Proposition 20.⁸⁶ A similar dilemma faced those arguing for a stronger regional role.⁸⁷ The approach selected reflects a decision to let the relationships define themselves within a rather loose framework of constraints. There appeared to be general agreement that most commissioners would serve in good faith and diligently perform their duties, although many had initially opposed Proposition 20. Experience has proven the correctness of this assumption.⁸⁸

Problems that resulted from the failure to more clearly delineate relationships among the commissions include: (1) inconsistent planning and permit area boundary determinations by regional commissions;⁸⁹ (2) regional decisions to settle litigation precipitated by actions of the state body; (3) regional activities not coordinated with those of other regions or of the State Commission but which must be paid for from the single fund for all commissions (*e.g.*, requesting legal opinions from the attorney general); and (4) problems connected with the preparation, scheduling, timing, and processing of the data and the content of the various components of the Coastal Plan.

Another weakness in the current structure relates to the precedential value of State Commission decisions on permit appeals. Legally, they stand isolated. There is nothing in the Act to suggest that these decisions must serve as a guide to the regional commissions for future permit decisions. The lack of direction in this regard has caused the expenditure of valuable time on permit appeals which raised issues previously decided by the State Commission—decisions with which a

86. Most observers agree that the composition of the first State Commission was of high quality, with a majority of its members committed to the achievement of Proposition 20's goals. See *Los Angeles Times*, Feb. 12, 1973, § 1-A, at 1, col. 1.

87. Proponents of this view argued that without the knowledge that the State Commission would be strongly supportive of the goals of Proposition 20, the regions should be empowered to adopt regional plans and the final plan, rather than merely make recommendations to the State Commission which might or might not be included in the plan submitted to the legislature. The Coastal Act is silent as to what happens if the regions fail to do anything. It also does not say whether regional recommendations must be incorporated or even considered in the final plan. In practice the state body has adhered closely to regional recommendations but has not hesitated, where necessary or appropriate from a statewide perspective, to ignore or make changes in some of the recommendations.

88. Another factor which may have operated to minimize conflicts was the realization by many commissioners that they were accountable to the voters who approved Proposition 20, and that the extensive regulatory controls might be extended or become unduly onerous for applicants if the commissioners did not efficiently administer the Act and complete the Plan on time.

89. In practice this proved to be only a temporary problem. The Coastal Plan includes maps of proposed boundaries within which the Plan should be implemented, and these are based on the same criteria throughout the state.

region may disagree and which it can freely ignore. In addition, requiring someone other than the State Commission, usually a citizen or citizen group having limited special interests, to bring an appeal has led to unequal treatment of some permit applicants and unequal protection for coastal resources. Fortunately, this has not been a chronic problem. Its occurrence, however, suggests a need for careful structuring of appeal procedures. Direction to the regions that they should be guided by state decisions might have alleviated the problem. In addition, a provision allowing the State Commission itself, its staff, or some of its members to appeal regional decisions would have been helpful.

Another difficulty appeared in connection with the relative autonomy of regional commission staffs. The Act permits each region to appoint its own executive director, who is exempt from civil service.⁹⁰ This has caused some staff fragmentation and hostility between "state staff" and "regional staff." On occasion, the loyalty of regional executive directors to "their" commissions has created counterproductive friction detrimental to the statewide program.⁹¹ Perhaps the working relationships of the staffs would have been improved had all the staffs been attached to the State Commission and assigned to the various regions with identifiable channels of responsibility.⁹²

Despite the weaknesses in the Coastal Act, the commissions have resolved most of their differences and have developed a working relationship which enabled the timely completion of an enormous task. Indeed, there are many advantages to this rather loose type of structure. Most significantly, it has generated a wide diversity of views about resource planning and management issues. There is considerable opinion that, had Proposition 20 created a more rigid regional-state structure, it would have retarded a free flow of ideas and would have inhibited experimentation by the regions with innovative resource management approaches. The Proposition 20 approach provided a flexibility during the initial 3-year planning period; the result is a product that appears to enjoy a high level of public support.

3. *The Role of Other Governmental Agencies.*—The Coastal Act was not intended to operate in a vacuum and the need to fully involve other governmental agencies affected by the activities of the commis-

90. CAL. PUB. RES. CODE § 27243 (West Supp. 1975).

91. During the search for executive directors, it was obvious that the regions were using quite different criteria in making their selections.

92. Many observers have noticed major disagreements between some regional planners and State Commission planners. Here too, more clearly delineated lines of authority and responsibility should have been established.

sions was recognized.⁹³ Many public agencies are major coastal resource users and their development activities fall within the reach of the Act's regulatory requirements.⁹⁴ In the absence of federal preemption, federal agency development activities are also subject to coastal permit controls.⁹⁵ Inevitably, the coastal commissions' power to exercise controls over the activities of these agencies has been and will remain an extremely sensitive issue. Although most agencies would have preferred to see the commissions stay off their "turfs," intergovernmental relationships, if not exactly love affairs, have been constructive and cordial.

Other governmental bodies were especially helpful in the beginning. Local governments loaned staff personnel and office space, the attorney general's office prepared sample rules and regulations for the commissions' use, the State Personnel Board expedited the processing of staff employment applications, and the Department of General Services made an extra effort to find office space and supplies. Several other agencies provided assistance so that the commissions could quickly achieve operational status. All 84 commissioners were not appointed until the end of December 1972, and yet the commissions were functioning by early February 1973.⁹⁶ This rapid startup is especially remarkable because many requirements of state law relative to hiring staff, renting office space, purchasing supplies, and the like, also had to be complied with. Veteran observers of state government could not recall any new agency that became organized and operational in a shorter period of time.⁹⁷ Other factors responsible for the rapid start-up were the broad scope of powers granted the commissions, the early date of effectiveness of the permit controls, and the potential costliness of delays in the commissions' ability to process permits.

After the pressures of becoming operational eased, the commissions and other agencies began to assess their relationships. Some agencies,

93. CAL. PUB. RES. CODE §§ 27001(b), 27320(b) (West Supp. 1975).

94. CAL. PUB. RES. CODE §§ 27105, 27400 (West Supp. 1975).

95. An opinion by the attorney general concludes that "where no federal function is impaired and the United States has not acquired exclusive jurisdiction over the federally owned or leased land, the permit provisions of the California Coastal Zone Conservation Act of 1972 would apply . . ." 1974 CAL. ATT'Y GEN. OP. SO 73/25.

96. Proposition 20 took effect November 8, 1972, with permit requirements becoming effective February 1, 1973. Commissioners could be appointed as late as December 31, 1972. The State Commission, six of its 12 members having previously been selected by the regional commissions, held its first meeting January 23, 1973. On February 7, 1973, emergency rules and regulations governing permit procedures were adopted. By February 9, 1973, the first formal permit applications were being received by the regions.

97. A key factor was the election and appointment by the State Commission at its first meeting of a chairman and an executive director who were then serving in similar capacities with the BCDC.

such as the Army Corps of Engineers, adopted letters of understanding that spelled out procedures for dealing with projects within those parts of their jurisdictions shared with the coastal commissions. Attempts to formalize working relationships with state agencies having regulatory powers over certain aspects of coastal projects, such as impacts on water quality, failed, however. The State Commission, though eager to work in cooperation with these agencies, was concerned that formalized agreements might tie its hands in applying the Coastal Act, which it viewed as requiring the application of standards more stringent than those applied by most other agencies.⁹⁸

Despite the absence of formalized relationships with other state agencies, a relatively good exchange of information has taken place. Most affected governmental agencies provided input during the planning process. Because of tight work schedules, however, the participation of many agencies was not as extensive as it should have been. Several agencies simply could not process commission-generated materials fast enough. The failure of the newly-created California Energy Resources Conservation and Development Commission⁹⁹ to comment on plan materials was of particular concern because that agency has key responsibilities with respect to power plant siting and energy conservation, and because many energy related facilities and activities are concentrated in the coastal zone.¹⁰⁰

The Coastal Act represents an approach of shared jurisdiction vis-a-vis local government. If a permit from a local government is denied, however, a project cannot be built even if a coastal commission permit is issued.¹⁰¹ Over time, the commissions' relationships with local governments have improved, although several local bodies still view the Act as an erosion of "home rule" and as an unwarranted intrusion into areas traditionally of purely local concern. The coastal commissions have clearly affected local governments along the coast. In some areas coastal permit requirements have eased development pressures and have shifted the focus of much of the remaining pressure from local units of government to the commissions. Several local governments recognized that Proposition 20 represented a fundamental public policy change relative to coastal land use planning and management and undertook rigorous reevaluations of their own general

98. See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 2 (Sept. 19, 1973).

99. CAL. PUB. RES. CODE §§ 25000-968 (West Supp. 1975).

100. Some of the most controversial Coastal Plan policies involve energy matters and directly affect functions currently shared with the Energy Commission. COASTAL PLAN 91-138.

101. CAL. PUB. RES. CODE § 27400 (West Supp. 1975).

plans.¹⁰² Some actively sought commission assistance in enforcing newly adopted local ordinances which they themselves could not always enforce because of broad "grandfather clause" provisions. Others, although initially unhappy about the imposition of permit conditions more stringent than their own, later officially adopted the standards set by the commissions.¹⁰³

Other than federally recognized regional planning agencies, no public agencies are specifically required to provide assistance to the coastal commissions.¹⁰⁴ In practice this has forced the commissions to solicit state agency assistance which could, for whatever reason, be withheld. There is little the commissions can do to remedy this situation. In the absence of any directive to the contrary, other regulatory agencies can pick and choose among requests. On several occasions the expertise of these agencies could have been extremely helpful. Assistance has usually been sought in permit matters, and when the particular case has appeared to be too controversial the affected agency has often opted for noninvolvement. The Act could have been improved in this regard by requiring other state agencies to provide assistance, such as analyzing particular aspects of a project within their areas of expertise when requested to do so by a coastal commission.

B. Coastal Regulatory Controls

1. The Permit Process.—The coastal commissions were given two principal responsibilities under the Coastal Act: (1) the preparation of a plan for the future of the coastal zone; and (2) the control of all coastal developments in order to protect the coast's natural resources, to preserve planning options, and to assure against the Plan's being rendered obsolete before the legislature has had the opportunity to implement it. Although these are two separate functions, they are equally important and complement each other in several important ways. The same commissioners who do the planning must make the real-world permit decisions. This leads to a better understanding of the many conflicts between conservation and development, between conservation and public use, and between competing use demands.

102. Redondo Beach, Cal., Resolution 5218, March 11, 1974.

103. The City of Newport Beach expressed outrage at a regional commission standard requiring two offstreet parking spaces for every dwelling unit (the purpose being to increase public access for nonresidents), while its own rule only required one. Newport Beach has now adopted the commission's standard. See Healy, *supra* note 74, at 373.

104. CAL. PUB. RES. CODE § 27241 (West Supp. 1975). See also CAL. GOV'T CODE § 66455.6 (West Supp. 1975), requiring local governments to transmit to the commissions copies of tentative subdivision maps for subdivisions lying wholly or partially within the coastal zone. This latter provision has been of limited utility.

Involvement in the permit process serves to demonstrate the practical limitations of planning. The permit process effectively encourages sound planning and, at an early stage, serves to identify the planning issues which must later be addressed. Permit decisions can also be used to carry out the evolving policies of the Plan prior to its implementation.

Although permit controls are important planning tools, they are also important because they provide immediate protection for natural and manmade resources against environmental degradation, and because they can be used to prevent the irreversible commitment of finite coastal resources. Rather than prohibiting all development during the planning period, permit controls insure that developments consistent with the Act are allowed to proceed. The permit process also serves the vital function of increasing the commissioners' awareness of delicate issues by requiring them to make tough decisions involving high social, economic, or emotional stakes. This effect was observed during the BCDC experience,¹⁰⁵ and the process has unmistakably had a similar effect on members of the coastal commissions.

The Coastal Act's permit process has been its most controversial feature. As such, it has made California's coastal planning and management program highly visible. Unfortunately, much of the media's attention has focused on the permit denials themselves rather than on the reasons for the denials. Relatively little coverage has been given to the many permits which have been approved or to the accomplishments of the permit program. A relatively negative image of the commissions has been created because they are so often depicted as "nay-sayers."

Through December 1974 the regional commissions had granted 9,979 permit applications and denied 453.¹⁰⁶ Obviously, the Coastal Act has not brought all construction along the coast to a halt. Several factors explain the high approval rate. Most of these permit applications were for single family homes or for other minor projects in areas which were already developed. These had minimal impacts on coastal resources.¹⁰⁷ Many permits were approved subject to conditions

105. ODELL, *supra* note 4, at 59.

106. CALIFORNIA COASTAL ZONE CONSERVATION COMM'NS, ANNUAL REPORT 7 (1973); CALIFORNIA COASTAL ZONE CONSERVATION COMM'NS, ANNUAL REPORT 6 (1974). These figures include regular permits, emergency and administrative permits, and claims of exemption.

107. These permits were mostly approved by use of a "consent calendar" process whereby the commission approved many noncontroversial applications at one time. The act also provides for the issuance of administrative permits for improvements to existing structures that do not exceed \$25,000 in cost and for other developments costing less than \$10,000. CAL. PUB. RES. CODE § 27422 (West Supp. 1975).

designed to bring the projects into compliance with the Coastal Act. Included were conditions to control density, height, and appearance, to increase public access to the shoreline, to protect scenic ocean vistas, and to mitigate adverse environmental effects. Many permits were granted for projects which had been modified before they came before the commissions. In addition, some developers, whose projects clearly would not have been approved, never applied for coastal permits; this resulted in a greater proportion of acceptable projects being reviewed by the commissions. Finally, most commissioners shared the attitude that in close cases the benefit of the doubt should be given to the applicant.

The permit workload during the early period of the commissions' existence was staggering. Commissioners, aware of the hardships caused by delay, worked to process permits as rapidly as possible.¹⁰⁸ Inevitably, there were cases which caused considerable hardship to the applicants. It must be remembered, however, that if the purposes of a regulatory scheme are to be achieved, its requirements must be adhered to and must be fairly and equally applied to all who fall within its reach.

2. *Who Must Get a Permit and For What Activities.*—Coastal permit controls apply to the development activities of any individual, business organization, or governmental entity, whether federal, state, regional, or local.¹⁰⁹ What constitutes a development activity is broadly defined to include virtually every type of land or water use activity, including waste discharges, changes in the intensity of use of land, and removal of major vegetation. It also includes lot splits and other subdivisions of land.¹¹⁰ The activity need not cause permanent changes in order to fall within the scope of this definition. Permit controls have been applied to the lifting of a moratorium on sewer connections, the conversion of apartments to condominiums, the holding of an auto race (in Long Beach), and the erection of a temporary art work called the "Running Fence." Although this definition appears all-inclusive, there are many types of activities affecting land use that are not covered. These include property assessment practices, changes of the property tax rate, annexations or incorporations that change or create municipal boundaries, land purchase and development lending practices, the buying and selling of land, and the formation of new special districts

108. The South Coast Regional Commission (Los Angeles and Orange Counties) clearly had the heaviest workload. That commission met 43 times in 1973, often from 9:00 a.m. until well past midnight. For a breakdown of permit actions by regions, see ANNUAL REPORT (1973), *supra* note 106, at 11-12; ANNUAL REPORT (1974), *supra* note 106, at 12-13.

109. CAL. PUB. RES. CODE § 27105 (West Supp. 1975). See also note 95 and accompanying text *supra*.

110. CAL. PUB. RES. CODE § 27103 (West Supp. 1975).

such as water, sewer, and transit districts.¹¹¹ If certain conditions are met, dredging of existing navigation channels, improvements to single family residences costing less than \$7,500, and routine repair and maintenance activities are specifically exempted from coastal permit requirements.¹¹² As mentioned above,¹¹³ the permit requirements apply only within a defined area. Urbanized areas meeting certain conditions *may* be excluded from the permit area; developments in these areas will not require permits unless they constitute significant changes in property use.¹¹⁴

Although some people think the definition of development should be expanded to include those activities which are not presently covered but which are major determinants of land use, others believe that the range of activities covered is already too broad. The commissions have been inundated with development applications which probably should never have taken up their time. These include proposed developments similar in nature to those kinds of uses already predominant in the surrounding area, particularly developments in urbanized areas away from the immediate shoreline. A greater degree of flexibility, allowing the commissions to exclude built-up and stabilized urban areas from permit controls, would have significantly reduced the volume of permit applications without doing violence to the basic objectives of the coastal regulatory process. But the information necessary for a rational description of these excludable areas and categories of activities was simply lacking at the time Proposition 20 was written. Perhaps the State Commission should have been empowered to specify by regulation those types of developments that could be excluded. On the other hand, an arbitrary but fixed standard would have reduced the time spent arguing about which activities and areas should be excluded. Perhaps the flexible approach is better suited for use *after* the completion of the basic planning for a coastal management program and its implementation.

Experience has shown that the depth of the permit area is excessive in some areas and insufficient in others. The 1,000 yard line was arbitrary and based on the rather simplistic notion that this band would embrace the most important coastal resources and the most

111. The point of departure appears to be a requirement that some physical activity take place or that some actual use of land or water be involved. See letter from Carl Boronkay to California Zone Conservation Comm'n, Oct. 14, 1975; 1975 CAL. ATT'Y GEN. OP. SO 73/79 IL (application of herbicides constitutes a "development"); 1975 CAL. ATT'Y GEN. OP. SO 75/14 IL (lifting of a sewer hookup ban is not itself a development, but the resulting increase in waste discharge is).

112. CAL. PUB. RES. CODE § 27405 (West Supp. 1975).

113. See notes 37-38 and accompanying text *supra*.

114. CAL. PUB. RES. CODE § 27104(c) (West Supp. 1975).

sensitive coastal land areas. The drafters of the Act lacked the data necessary to draw a more precise boundary based on geomorphic and geophysical criteria. Although the 1,000 yard strip has served its purpose well, the information now available indicates that a more rational inland boundary line would have been predicated on the location of significant coastal resources.¹¹⁵ It would also have included areas where development could, directly or cumulatively, affect public access to coastal areas that are either used or are potentially usable for recreation.

California's Coastal Act contains a much maligned grandfather clause¹¹⁶ which provides that a person need not get a coastal permit if he has obtained a vested right prior to November 8, 1972.¹¹⁷ The Act, however, did not specify a procedure for determining whether a person is entitled to an exemption from permit controls by virtue of a vested right. As a result it was necessary for the State Commission to adopt procedures by which "claims of exemption" could be decided.¹¹⁸ Claims of exemption are often complex and involve essentially legal questions.¹¹⁹ In making such determinations the Coastal Act's permit standards are irrelevant. Processing these claims has consumed considerable time and, because the commissions did not impose fees on persons claiming exemption, has drained already limited funds. These problems should have been anticipated by the drafters of the Act.

The grandfather clause, written into the Act to prevent a flurry of construction activity between the effective date of the Act (November 8, 1972, the first day after passage of the Act) and the date on which per-

115. Significant natural, manmade and recreational coastal resources include: Beaches, dunes, wetlands, estuaries and their immediate drainage areas; significant wildlife habitat areas; agricultural lands influenced by the coastal climate or otherwise designated in Plan policies; existing public recreational areas; areas proposed by public agencies for public acquisition; potential public recreation areas located near major metropolitan centers (*e.g.*, Santa Monica Mountains, Irvine, San Mateo coast); special coastal neighborhoods; and other manmade resources

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116. CAL. PUB. RES. CODE § 27404 (West Supp. 1975).

117. *Id.* Generally, this means that a person who has actually commenced construction in reliance on final government approval and who has incurred liabilities (expenditures for work or materials) obtains a right to complete the project even though there is a subsequent change in the law.

118. CAL. ADMIN. CODE, Title 14, Div. 5.5 §§ 13700-03 (1974). These determinations are vital to the orderly administration of the permit process because the commissions cannot properly enforce the Act unless they know by whom a coastal permit is needed.

119. Exemption claims involving single structures are relatively simple to resolve. Claims for projects that have many different parts, such as planned unit developments, subdivisions, redevelopment agency projects, and long delayed but related portions of a freeway or road system, are extremely complex and require the careful application of legal doctrines to facts that are not always clear.

mit requirements were to go into effect (February 1, 1973), requires that rights must have vested prior to November 8, 1972, in order for the developer to be exempt from coastal permit controls.¹²⁰ This provision did in fact discourage many builders from rushing forward with their projects. Others chose to ignore it and began hectic construction, in some cases working 24 hours a day. Legal action was taken against one developer when he refused to apply for a permit after February 1. The California Supreme Court in a 4-to-3 decision ruled that, since the developer had performed substantial, lawful construction prior to February 1, 1973, the terms of the Act did not require that he obtain a permit.¹²¹ The court, grounding its decision on strict statutory construction, left intact California case law relative to vested rights in other contexts.¹²² As a result of this decision several previously denied claims were reexamined by the commissions and granted because substantial onsite construction had been performed prior to February 1, 1973.¹²³ But if a developer requested an exemption on the ground that he had obtained vested rights, the necessary elements set forth in the grandfather clause must have existed prior to November 8, 1972. The outcome of this rather confusing situation was that, although *See the Sea* benefitted relatively few developers, it penalized the prudent builder who, after Proposition 20 passed, waited and applied for a permit in order to comply with the spirit and purposes of the Coastal Act.¹²⁴

120. CAL. PUB. RES. CODE § 27404 (West Supp. 1975) originally contained a cutoff date of April 1, 1972. It had been anticipated at the time the Act was drafted that the initiative would receive official certification for the November ballot about April 1, 1972. The thinking was that press coverage of this event might be sufficient to meet the constitutional requirement of adequate notice. The date was later changed by the legislature to November 8, 1972, the day the Act went into effect.

121. *San Diego Coast Regional Comm'n v. See the Sea, Ltd.*, 513 P.2d 129, 130 (Cal. 1973).

122. *Id.* at 131-32. *See Selby Realty Co. v. City of Buenaventura*, 514 P.2d 111 (Cal. 1973).

123. *See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 19-20* (Feb. 20, 1974); *California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 9* (Jan. 23, 1974).

124. Justice Mosk noted in dissent that in light of the Act's grandfather clause and a formal opinion by the attorney general,

a reasonably prudent builder would have deferred construction for a brief few weeks and applied to the commission for a permit after February 1, unless he was deliberately attempting to "beat" the deadline. It seems inequitable to penalize the numerous persons who acted ethically and who scrupulously adhered to the purposes of the act, and to reward those few who hastily incurred obligations after November 8 for ulterior purposes.

San Diego Regional Coast Comm'n for San Diego County v. See the Sea, Ltd., 513 P.2d 129, 137 (Cal. 1973) (dissenting opinion).

The grandfather clause has been one of the most popular subjects of litigation involving the Coastal Act.¹²⁵ Some of the cases raise significant issues relative to the doctrine of vested rights and have major implications for other land use planning and management programs at both the local and state levels. For example, one little-noticed case involved the assertion of a claim of vested rights by a public agency (a redevelopment agency). In rejecting the claim, a unanimous appeals court held that the doctrine of vested rights is not intended to benefit public agencies and therefore cannot be raised by them. Since many vested rights claims involve cities, counties, port districts, and other state and local agencies, this decision would have had significant consequences if upheld by the California Supreme Court. The supreme court, however, reversed the appellate court's decision. It held that, because the Coastal Act specifically includes public agencies within its definition of "person" and since the vested rights provision of the Act applies to all "persons," public agencies can claim vested rights. The court, though, added that the result *might* be different under common law in the absence of any specific statutory provision.¹²⁶

3. *The Test; Burden of Proof; Voting; Conditional Permits.*—The Coastal Act, taken as a whole, clearly creates a presumption against the appropriateness of any development during the planning period. Before any coastal development, including one entitled to an administrative permit, can proceed, the appropriate regional commission (and, on appeal, the State Commission) must make an affirmative finding that both of the following standards have been met: (1) that the proposed "development will not have any substantial adverse environmental or ecological effect"; and (2) that the proposed development is consistent with the policies and objectives of the Act.¹²⁷ This twin-pronged test is intentionally tough and broad in scope. A significant element of this test is the wording in the second standard which specifically refers to the resources of the coastal zone, a much *larger* area than the permit area itself. This language requires that

125. See Cal. Dep't of Justice, Coastal Commission Cases Handled by the State Attorney General's Office (Oct. 2, 1975).

126. *Urban Renewal Agency v. California Coastal Zone Conservation Comm'n*, 542 P.2d 645 (Cal. 1975).

127. CAL. PUB. RES. CODE § 27402 (West Supp. 1975). These policies and objectives are: (1) the preservation of "the ecological balance of the coastal zone"; (2) "The maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values"; (3) "The orderly, balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources"; and (4) "Avoidance of irreversible and irretrievable commitments of coastal zone resources." CAL. PUB. RES. CODE §§ 27001, 27302 (West Supp. 1975).

consideration be given to effects of a proposed development which would extend beyond the boundaries of the permit area.

Because a basic thrust of the Act is to prevent development activities during the planning period which could cause harm to the environment or which could foreclose planning options or implementation of the plan, the burden of proof on all issues at both the regional and the state levels rests with the proponent of the proposed development.¹²⁸ In addition, issuance of a permit requires a majority vote, at both levels,¹²⁹ of the total authorized membership of the commission.¹³⁰ A two-thirds vote of the total authorized membership is required if the development involves dredging or filling of coastal water areas, or if it would reduce the size of any beach or other recreation area, reduce or impose restrictions on public access to the shoreline, substantially interfere with ocean views from the nearest highway, or adversely affect water quality, fisheries, agricultural areas, or areas of open water free of visible structures.¹³¹ These categories were singled out for tougher treatment because they include those activities viewed as having the greatest potential impact on the more important coastal resources. The two-thirds vote requirement has proven to be of critical importance, especially in the more controversial cases. A problem with respect to its application appeared almost immediately, however. The types of activities to which the requirement applies are defined broadly, and judgments are often necessary to determine whether a particular project falls within the definition. In such situations the commissions have by a majority vote (although the question is not free from doubt, the majority vote has usually been of the total authorized membership) decided whether permit issuance requires a two-thirds vote.¹³² Again, more careful drafting could have avoided this problem. The Act's burden of proof and voting requirements have been upheld by the courts.¹³³

128. CAL. PUB. RES. CODE § 27402 (West Supp. 1975).

129. CAL. PUB. RES. CODE §§ 27400, 27423(c) (West Supp. 1975).

130. CAL. PUB. RES. CODE § 27400 (West Supp. 1975).

131. CAL. PUB. RES. CODE § 27401 (West Supp. 1975).

132. One regional commission determined by majority vote that a particularly controversial project, which obviously could not muster a two-thirds vote, needed only a majority vote because it would not adversely affect agricultural uses of land. The region reached this decision even though many acres of grazing land would be converted to other uses by the project. At the time of the vote several hundred head of cattle were actually grazing on the land (photographs were taken). The State Commission, on the advice of its staff, concluded that a two-thirds vote was required and proceeded to deny the permit without debate or a dissenting vote.

A similar case recently occurred, with the same outcome, involving an application by the Atlantic Richfield Company to drill 17 new wells off the Santa Barbara coast.

133. See *REA Enterprises v. California Coastal Zone Comm'n*, 125 Cal. Rptr. 201 (Ct.

A most useful tool used by the commissions in carrying out the provisions of the Act is the conditional permit. Many permits are approved subject to conditions that are usually arrived at with the cooperation of the applicant. The Act specifies certain minimum conditions.¹³⁴ The key is reasonableness, and some rational nexus must exist between the condition imposed and the achievement of a legitimate purpose. The commissions are given wide latitude in choosing conditions.¹³⁵ On occasion, conditional permits have not produced the intended result. For example, some approved projects have not been built because the developers purportedly felt the conditions had rendered the projects economically unattractive. In some cases a commission has turned to the conditional permit as a way out of a controversial, "no-win" situation, even though it was evident that the conditions did not solve the basic problems raised by the project under consideration. Similarly, conditions have occasionally been imposed which, as a practical matter, cannot or will not be implemented.

A case in point involved a major subdivision situated along 10 miles of Sonoma County coastline.¹³⁶ The problem became manifest when individual lot owners in the subdivision made separate applications for permits to build single family residences. Neither the subdivision developer nor the homeowners' association, which represented the individuals who had already built homes on their lots, was before the regional commission. The commission's dilemma involved coping with the cumulative impact of development of the entire subdivision within the context of permit applications by individual lot owners. Each building proposed may, by itself, have a minimal environmental impact. But the combined effect of many such buildings would have clearly recognizable and significant impacts. After a considerable amount of agonizing, the regional commission granted the permits

App. 1975); *CEED v. California Coastal Zone Conservation Comm'n*, 118 Cal. Rptr. 315 (Cl. App. 1974).

134. CAL. PUB. RES. CODE § 27403 (West Supp. 1975) requires that all permits "be subject to reasonable terms and conditions" to ensure that:

- (a) Access to publicly owned or used beaches, recreation areas, and natural reserves is increased to the maximum extent possible by appropriate dedication.
- (b) Adequate and properly located public recreation areas and wildlife preserves are reserved.
- (c) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon coastal zone resources.
- (d) Alterations to existing land forms and vegetation, and construction of structures shall cause minimum adverse effect to scenic resources and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

135. For further discussion of the use of permit conditions, see Douglas, *supra* note 22, at 755; Healy, *supra* note 74, at 370-72.

136. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 2-10 (June 19, 1974).

subject to several conditions applicable to the entire subdivision. The conditions were deemed to be the minimum necessary to enable the commission to make the findings the Act requires as a prerequisite to permit approval.¹³⁷ The regional commission recognized that only the developer or the homeowners' association could accomplish these overall conditions. Yet it only had before it the applications of the individual lot owners. It was thought that approval of the permits subject to the conditions would induce the developer and the association to accomplish the overall conditions. The State Commission recognized, however, that neither the developer nor the association intended to carry out the conditions. Accordingly, it approved the permits subject to the same conditions but established a procedure to allow hapless individual lot owners to build in advance of the accomplishment of the conditions.

Under the terms of the permit construction on a lot in the subdivision could begin upon deposit of a \$1,500 payment into an interest bearing account established by the regional commission. On performance of the conditions by the association, the money will be returned to the lot owners. If the conditions are not met, the money will presumably be used by the commission to implement the conditions. In the latter event a portion of the money would be used to purchase public access easements and dry beach areas. The commission, however, has no power of eminent domain to condemn the land in the likely event that the owner (the developer) refuses to sell. Consequently, another state agency must be relied upon and legislative approval obtained if this condition is to be met. The same situation holds for other conditions which the commission itself lacks the necessary authority to accomplish. In the interim the deposit fund grows, and more buildings are being built in the subdivision.¹³⁸

A major weakness of the conditional permit is the inability to assure compliance. The resources necessary for proper enforcement by the commissions are simply not available. Other demands on commission staff time preclude field inspections of most developments, with the exception of major projects, which have been approved sub-

137. These conditions included the provision of limited public access to the 10 miles of shoreline and protection of the public view of the sea by removal of 2% of some 100,000 trees planted by the developer on the seaward side of Highway #1 as a visual barrier. Memorandum from Michael L. Fischer to North Central Coast Regional Comm'rs, Nov. 15, 1974.

138. More than a dozen buildings have been constructed since these conditions were imposed. The account has over \$20,000 in it, and not one of the conditions has yet been accomplished.

ject to conditions.¹³⁹ A possible solution would have been the requirement that local governments assist the commissions by using building department inspectors to check for compliance with coastal permit conditions. This could easily be done at the time inspections are conducted for compliance with city or county building or use permits prior to certification for occupancy.

4. *Appeals*.—Regional commission permit actions may be appealed to the State Commission and then to the courts.¹⁴⁰ The State Commission may, however, decline to hear appeals that it determines raise “no substantial issue.”¹⁴¹ As noted above, appeals heard at the state level are given a de novo review and are subject to the same voting requirements applicable at the regional level.¹⁴² The state body may grant, deny, or modify the permit action taken by the region and may impose additional conditions. As a matter of policy in order not to circumvent the regions, the State Commission directs applicants back to the regional commission if state conditions will so significantly change the project as to make it, in effect, a different project than had been considered by the regional commission.

Through December 1974, 464 appeals had been acted on.¹⁴³ Of these, 156 permits were approved and 149 were denied; 22 claims of exemption were approved and 41 denied; 54 appeals were withdrawn after filing and 42 appeals were determined to be invalid. There were 161 appeals not heard on the ground that they raised no substantial issue.¹⁴⁴ Initial fears that the State Commission would be inundated with insubstantial appeals have not been borne out. Apparently the time and effort required to pursue an appeal have discouraged frivolous filings. On the other hand, many permit appeals which may not have

139. Currently, the commissions must rely largely on the good faith of developers and the deterrent effect of potential penalties to ensure compliance. After the planning had been completed several commissions began permit follow-up inspections. A few violations have been referred to the attorney general for appropriate action. It is too early to say whether this effort has come too late.

140. CAL. PUB. RES. CODE §§ 27423(a), 27424 (West Supp. 1975).

141. CAL. PUB. RES. CODE § 27423(c) (West Supp. 1975). Generally, the criteria used in finding “no substantial issue” are: (1) whether there was a substantial factual basis for the decision; (2) whether there was a procedural error in the absence of which a different decision would have been reached; (3) whether the matter raises an issue of statewide or major concern; and (4) whether the matter adversely affects the evolving coastal zone plan.

142. See note 47 and accompanying text *supra*.

143. ANNUAL REPORT (1973), *supra* note 106, at 8; ANNUAL REPORT (1974), *supra* note 106, at 10.

144. Of these, 66 actions on permit matters and four on claims of exemption had the effect of letting regional approvals stand, while 76 actions on permits and 15 on claims upheld denials. ANNUAL REPORT (1973), *supra* note 106, at 8; ANNUAL REPORT (1974), *supra* note 106, at 10.

been frivolous were never filed because of the considerable costs involved.¹⁴⁵ In addition, these figures do not show who brought the appeals. This is important because permit applicants who are denied permits by the region *must* appeal, if they intend later to seek judicial review, in order to exhaust their administrative remedies. If appeals filed solely on this ground were excluded, the number that might be termed frivolous would become even smaller.

The appeal process is intended to allow application of statewide perspectives in permit matters, to provide another level of development review, and to promote uniformity in the permit process. The State Commission's appellate function is one of the most important elements of the Coastal Act. As expected, differences appeared among the regions in the application of permit requirements. State Commission decisions on appeals served to guide the regions toward greater uniformity. Although not binding on the regions, state decisions are distributed to all commissioners. Generally, the regions have followed these decisions out of a sense of fairness and a recognition of the need to avoid costly appeals and possible reversals. Another reason why the regions have not ignored state level decisions is that such decisions are based on a *de novo* review of the proposed project. The fact that appellate decisions do not constitute judgments as to the correctness of the regions' actions has avoided much potential conflict. As a result there has been little friction between the state and regional commissions that could prevent the regions from giving objective consideration to the substantive content of the state level decisions.

Some concern was voiced that the appellate process would remove the incentive for project opponents to make full presentations of their cases at the regional level. These persons presumably would save their best efforts for the State Commission. To some extent this may have occurred during the early period of the program. As the number of cases not heard on appeal has increased, program participants have come to recognize the importance of complete presentations to the regions. There is also no evidence to suggest that the regions have expended less effort on permit matters because of the possibility of appeal. If either of these predicted effects has actually occurred, it certainly has not been noticeable.

A problem that is noticeable is the Act's reliance on citizen groups to bring appeals. Appeals are time consuming and costly. In many instances projects are opposed for rather narrow, personal reasons

145. The State Commission holds its meetings in different places along the coast. As a result travel costs and time expenditures are considerable. See note 164 and accompanying text *infra*.

(e.g., because the proposed project would block the neighbor-opponent's view), and not because of their possible adverse impacts on coastal resources or planning options in the area. The result is that many projects approved by a region which could have adverse environmental impacts or which are inconsistent with emerging Coastal Plan policies are not appealed because no individual or neighborhood group is directly affected. The State Commission itself cannot appeal regional permit decisions which are inconsistent with previous decisions on similar issues. To more effectively accomplish its principal purposes the appeals process should be modified in several ways.

The state agency should be authorized and directed to appeal, on its own motion, regional decisions that raise substantial issues relative to the statewide program. The standards could be somewhat similar to those now used in declining to hear appeals. Another possible modification would be to require the regions to recognize and be guided by state level decisions. State Commission decisions should not be given the status of appellate court decisions, but regions which disagree philosophically with the decisions should not be allowed to simply ignore them. In addition, the category of regional decisions which may be appealed should be expanded to include those which can directly affect the statewide process, such as boundary determinations, decisions to exclude certain areas from permit requirements, and decisions relative to litigation.

5. *Enforcement.*—Enforcement of the Coastal Act's regulatory controls, especially for enforcement of permit conditions, has proven to be more difficult than anticipated.¹⁴⁶ A principal reason for this derives from inadequate funding for the commissions.¹⁴⁷ As a result, the commissions have been constantly understaffed; during their first year they had to rely largely on student volunteers and citizen groups to patrol coastal areas for violations. Probably not every project constructed without a coastal permit was discovered. Initially, most violations occurred because developers were not yet aware of the new coastal permit requirements. In such cases a cease and desist letter was sent to the builder and work usually stopped immediately. This type

146. The failure to anticipate enforcement problems stems in part from the belief that the Coastal Act's provisions for stiff penalties and broad standing to sue would be sufficient. The latter provision was intended to be a mechanism to allow private citizens and other governmental bodies, especially cities and counties, to go to court to restrain violations. The assumption that cities and counties would assist in the enforcement of the Act proved to be unwarranted.

147. The origins and nature of the funding problem have been discussed elsewhere. See Douglas, *Coastal Zone Management—A New Approach in California*, 1 COASTAL ZONE MANAGEMENT J. 1, 20–21 (1973).

of violation occurred less frequently as publicity about the coastal commissions increased public awareness of the new controls. Today violations have practically ceased altogether.¹⁴⁸ Occasionally, they are still reported by vigilant neighbors; even more rarely, open defiance of the law continues.¹⁴⁹

Of greater concern is the inability to effectively enforce compliance with conditional permits.¹⁵⁰ Now that the planning work is nearly finished, the commissions have been able to follow up on some of the issued permits to check for compliance. When a violation is discovered, the question arises as to whether any remedies are still available since the structure typically has been completed.

The principal enforcer of the Coastal Act is the state's attorney general. As of September 1975, the attorney general's office has participated in 238 cases involving implementation of the Coastal Act. Unfortunately, that office too has lacked the resources to effectively police the Act and at the same time meet the commission's other demands for legal services.¹⁵¹ Proposition 20 provided a onetime appropriation of \$5 million for the operations of the seven commissions but provided *no* funding for legal services.¹⁵² Since the attorney general had no choice but to provide legal services, the additional costs generated by the commissions in early 1973 had to be absorbed by his office, and a budget augmentation from the state's general fund had to be requested.¹⁵³ The commissions themselves could do little to alleviate the

148. An effective technique used to prevent this type of violation in many areas is to enlist the aid of city and county building departments. Many now refuse to issue building or use permits until the developer presents proof of a valid coastal permit. Some local governments have refused to cooperate, and enforcement problems in those areas linger.

149. In one case even a jail sentence has not been a deterrent—the particular builder is again building without a coastal permit. *Los Angeles Times*, March 5, 1974, § II, at 1, col. 6.

150. See note 139 and accompanying text *supra*.

151. Under California law, unless the enabling statute provides otherwise, the attorney general must provide legal services to state agencies. CAL. GOV'T CODE §§ 12511, 12519 (West 1963). Such services include drafting legal opinions on request, providing legal counsel during all administrative hearings of the seven commissions, preparing and conducting trial and appellate court proceedings, and giving general advice and consultation. Enforcement has to be squeezed in somewhere.

152. California Coastal Zone Conservation Act of 1972 § 4 (Nov. 7, 1972).

153. The problems caused by this oversight were exacerbated by the lack of sympathy to the aims of the Coastal Act on the part of both the legislature and the administration of Governor Reagan. The scramble to secure the necessary funding for the attorney general's legal services was frustrating and time-consuming, but finally successful. In fiscal 1973-74 an augmentation of \$250,000 was secured; in fiscal 1974-75, \$420,000; and in fiscal 1975-76, \$441,000. By mid-1975 the attorney general had allocated nine attorney positions to serving the commissions. But the approved level of funding allowed for only eight positions. Memorandum from California Dep't of Justice to Peter Douglas,

situation since they had their own funding problems. Experience has shown that many of the attorney general's functions could have been performed by in-house counsel, with the attorney general retaining the duty of issuing opinions and representing the commissions in court. Granting of authority to the commissions to retain their own legal counsel would represent a major improvement of the Coastal Act.

The Act relies heavily on participation by citizens and other governmental agencies for its enforcement through extremely broad provisions regarding standing to sue. The effectiveness of this provision, however, has been seriously undermined by several lower court decisions imposing court costs and attorneys' fees on the losing party in any action brought to enjoin a violation of the Act.¹⁵⁴ Although this issue has not been finally resolved, the decisions have already had an adverse impact on enforcement at all levels because they imply that the commissions themselves could be saddled with these extra costs when they bring an action to prevent violations of the Act and lose.¹⁵⁵ The specter of these additional legal costs makes the commissions' financial status precarious indeed.

Although the Act provides stiff penalties for violations,¹⁵⁶ these provisions have been sparingly used. Typically, the amount of a penalty is negotiated and settled out of court. In some cases the commissions have not sought any penalties, even where a flagrant violation has been established. Since penalties are intended both to deter and to punish unlawful acts, these actions by the commissions suggest that a minimum penalty should have been established for intentional violations. It appears that what were thought to be tough enforcement provisions have, for various reasons, been considerably weakened.

C. Public Participation

A product of citizen effort, the Coastal Act seeks to maximize the involvement of private citizens and citizen organizations in both the permitting and planning processes.¹⁵⁷ Recognizing that only a popular-

Jan. 22, 1975 (on file with the California Assembly Comm. on Resources, Land Use and Energy).

154. See notes 166-67 and accompanying text *infra*.

155. The developer who prevailed in *San Diego Regional Coast Comm'n v. See the Sea, Ltd.*, 513 P.2d 129 (Cal. 1973), is now seeking \$39,500 in legal fees from the regional commission that brought the action. See Cal. Dep't of Justice, Coastal Commission Cases Handled by the State Attorney General's Office, at 22 (Mar. 11, 1975). See also *South Coast Regional Comm'n v. Citron*, No. C62940 (Los Angeles Super. Ct. 1974) (defendant who won on issue of vested rights is entitled to attorneys' fees from the regional commission).

156. CAL. PUB. RES. CODE §§ 27500, 27501 (West Supp. 1975).

157. CAL. PUB. RES. CODE §§ 27001(b); 27201; 27224; 27320(b); 27420(b); 27423(a), (c); 27424-26; 27428 (West Supp. 1975).

ly supported coastal plan is likely to be implemented by the legislature, the coastal commissions have gone to great lengths to involve the public in their planning work.¹⁵⁸ These efforts have resulted in what is probably the most extensive public involvement in a comprehensive land use and resources management and planning process ever attempted in this country. While not everyone will be satisfied with the Coastal Plan, no one can claim that there was insufficient opportunity to participate in its preparation. Even prior to the public hearings, preliminary drafts of findings and proposed policies were widely distributed for technical review and comment. Extensive changes were made as a result of the technical reviews and the public hearings. In fact, it was partly to optimize effective public participation in the planning process that the State Commission adopted an element-by-element approach for plan preparation.¹⁵⁹

An important advantage of integrating regulatory controls with planning was that many people who participated in the permitting process would not have become involved in the planning alone. In practice many individuals and groups appeared before the commissions only on permit matters. They did not comment on planning materials and did not participate in the public hearings on plan elements. But because many planning issues emerged during the permit hearings, these persons did in fact participate in planning for the future of the coast.¹⁶⁰ At the same time, many people who did par-

158. Public participation has been generated in many ways by both the State and regional commissions. These include: (1) mailings to large numbers of people seeking review and comment on plan elements as prepared, modified or adopted; (2) community workshops throughout the regions; (3) media coverage and appearances by persons involved with the commissions to discuss the process and solicit comment; (4) extensive public hearings up and down the coast and at inland locations; (5) countless staff sessions with interested citizens and interest groups; (6) distribution by hand of questionnaires and plan element summaries on busy beaches on holidays; (7) public appearances by staff members, commissioners, and others interested in coastal planning; (8) extensive use of public service announcements on radio and television; (9) support for programs by educational institutions to inform and involve the public; (10) support and participation in University of Southern California Sea Grant projects designed to increase public awareness and participation in planning; and (11) formation of citizen advisory panels.

159. At the time the commission adopted this planning methodology, the element-by-element approach was characterized as a "very sensible proposal [that] allows the maximum opportunity to involve the people in coastal zone planning." California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 4 (June 6, 1973).

160. A particularly good example involved a permit application to build a marine boiler plant in a San Diego neighborhood. The neighborhood was a largely Chicano, primarily low income residential area near the shore of San Diego Bay. The residents of the area mobilized in opposition to the project, and their representatives appeared before both the regional commission and the State Commission. These persons pointed with pride to ongoing efforts to upgrade and improve their neighborhood, including attempts

ticipate in the planning process did so primarily as a result of their previous involvement in permit matters.¹⁶¹

There are several major factors that help explain the high level of citizen interest and participation in California's coastal management and planning program. Among these was the organization and mobilization of vast numbers of persons both before and during the Proposition 20 campaign. Many persons involved in the campaign came to view the Coastal Act as, in part, their "baby" and felt they had a stake in its effective implementation. In addition, provisions in the Act itself were designed to assure opportunities for public participation.¹⁶² The nature of the planning process abetted public interest, particularly because of the high level of visibility of the commission proceedings, the ready accessibility of the commissioners,¹⁶³ and the often emotionally charged confrontations between prodevelopment and proenvironment interests during meetings. Continued participation has been reinforced by the commissions' acknowledgment of public input and frequent action upon it.

The consequences of implementation of the Coastal Plan have certainly stimulated public concern and interest. High stakes, in terms of natural resources and economics, are involved for a large and vital chunk of California's land area. Permit and planning decisions have real world consequences for many people, especially concerning jobs,

to secure access to the bay. Their central point, however, was to demonstrate the uniqueness and value of their neighborhood as a resource. In denying the permit application the State Commission said: "The coastal zone contains many natural resources deserving of protection under the Coastal Act. It also contains man-made resources—such as low income neighborhoods near the shoreline—that are just as threatened as many of the natural resources, and are deserving of similar protection under the Coastal Act." California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 11 (Sept. 17–18, 1974).

The people who appeared at the permit hearings did not later participate in the drafting of the Coastal Plan policy on this issue. They had made their case for purposes of the permit matter. They had also left their mark on the Coastal Plan. The importance of protecting unique coastal neighborhoods was later dealt with and made a part of the Plan. COASTAL PLAN 75.

161. The authors are familiar with many persons who were generally disillusioned with government and especially with planning, but who were "turned on" by their involvement in permit cases. These persons found they could affect a decisionmaking program that had a direct impact on the quality of their own neighborhoods. They saw they had a stake in the coastal program and became some of the most active participants in the planning work of the commissions.

162. CAL. PUB. RES. CODE §§ 27001(b), 27224 (West Supp. 1975).

163. This results, in part, from the commissioners' attitude that they are accountable to the public that created their positions and from a healthy recognition that the time and effort spent on planning will have been wasted if public understanding and acceptance of their work product is not achieved. Every meeting is preceded by public notice. These meetings and each commission's files are open to the public.

economic investments, recreational activities, and the quality of each person's immediate living environment. Many persons have undoubtedly been encouraged to participate because of the variety of values, many of which had never before been seriously considered in land use regulatory processes, which by the mandates of the Coastal Act must enter into the decisionmaking process. Last, knowledge that the Coastal Plan is not self-implementing and that the permit process is temporary has sustained ongoing involvement by participants who know that they will have to go back to the legislature and the public to assure implementation of the Plan and continuance of coastal development controls.

The Coastal Plan is proof that participatory planning can work. There are, however, weaknesses in the public participation component of California's coastal program. The major inhibitors of even more extensive public involvement have been the expense of a thorough, high quality job and the scarcity of financial resources to sustain participation. Effective involvement in the permit process means appearing at both the regional and state levels. The State Commission changes the location of its meetings, alternating among several cities up and down the coast. As a result, expensive travel is often necessary. Frequently, the permit applicant requests postponement at the last minute. The appellant, at least when the appellant and the applicant are different parties, then finds he has wasted a trip and must try to get to the next meeting weeks later at yet another location.¹⁶⁴ Travel costs alone have significantly cut into the level of citizen participation. In addition, many permit matters require the assistance of professionals with technical expertise in various subject areas. Legal help is also often required. This type of support is rarely free. Consequently, many conservation and citizen groups have been able to participate only on an intermittent basis. When they have been involved, the technical information or expertise necessary for a complete presentation is often lacking. Those groups which have been able to participate on a regular basis have done so solely because of continuous financial support from several sources.¹⁶⁵ But even for these few groups the available financial support is woefully limited. Lack of adequate funding has severely restricted the extent to which these groups can assist

164. The State Commission has attempted to schedule its meetings in locations involving the least travel distance for the greatest number of people who might be interested in the particular agenda.

165. In one case, the defendant developer settled out of court and agreed to deposit \$100,000 in a trust fund for use by citizen groups involved in the coastal program. The fund is managed by the Lake Merced Council, which has awarded grants for the support of many groups and activities involved in either coastal permit or planning matters.

in the effective implementation of the Act. For example, they have been unable to appeal many regional permit decisions which were inconsistent with previous decisions or otherwise in conflict with the goals and objectives of Proposition 20, and which should have been appealed. Most of these organizations are too inadequately financed to fully utilize the appeal process.

A noticeably adverse impact on public participation has been caused by the lower court decisions already mentioned¹⁶⁶ which have imposed court costs and attorneys' fees on citizen-organization plaintiffs that lost legal actions to restrain violations of the Coastal Act. The question of attorneys' fees is currently before the California Supreme Court.¹⁶⁷

The primary purpose of the broad standing provisions in the Act is to enlist and encourage the public's help in assuring effective enforcement and implementation. Legal actions are expensive, and without the provision for payment of legal fees, citizen groups would hesitate to undertake them. Because the Act relies so heavily on public participation, provision should have been made for resources to sustain that participation.¹⁶⁸ The purposes of the Act itself would be seriously undermined if attorneys' fees were to be imposed on citizen groups acting as plaintiffs when, for whatever reason, they do not prevail in actions brought to prevent violations. As noted, the lower court decisions have already had a chilling effect on public involvement in the enforcement process.

Despite these obstacles, the extent and quality of public involvement in California's coastal resources management and planning program have been remarkably good. There is little doubt that but for this participation the Coastal Plan now before the state legislature would not enjoy the broad public support it has. The involvement of many individuals and groups interested in the use and conservation of coastal resources has been a significant, positive force in framing and refining the broad scope of issues raised in both the permit and planning aspects of the commissions' work. This participation has been an extremely productive force in bringing into perspective the many conflicts among conservation, development, and public interests in

166. See notes 154-55 and accompanying text *supra*.

167. See letter from Carl Boronkay to Melvin B. Lane, Dec. 6, 1974. The lower court decision in the case under consideration is *Great Lakes Properties, Inc. v. City of El Segundo*, 117 Cal. Rptr. 232 (Ct. App. 1974).

168. Such a proposal to fund public participation has been made to California's new Energy Resources Conservation and Development Commission. California Energy Resources Conservation and Development Comm'n, Public Participation in the California Energy Resources Conservation and Development Commission: The Role of the Administrative Advisor, and the Funding of Public Participants (Sept. 1975).

the use of limited coastal resources. Most important, however, has been the opportunity thus provided for the development of consensus planning and decisionmaking. The Coastal Act has successfully brought developers and environmentalists together to explore methods and techniques agreeable to both sides. Even though agreement has often not been reached, representatives of the various interest groups involved have at least started talking with each other.¹⁶⁹

D. Major Issues Raised by Coastal Development Controls

During the past 3½ years, the coastal commissions have processed over 18,000 permit applications and claims of exemption. The bulk of these did not involve important coastal resource issues and were routinely approved. Those that did raise vital issues or were controversial almost always were appealed to the State Commission. Several state level decisions have statewide importance.

1. *Local Planning.*—The coastal commissions, particularly the state body, have repeatedly emphasized the importance of local planning. In some areas local planning does not exist. In others, it exists but is obsolete, inadequate, or simply ignored. The commissions have encouraged local planning where none now exists and have attempted to adhere to it where it does. Any local planning is complicated by the fact that several governmental bodies have jurisdiction over development activities but are unable to get together to do the necessary planning. As a result, resource allocation decisions are made on an ad hoc basis. Resources and environmental quality suffer and the carrying capacities of natural and manmade systems become stressed and overloaded. Where these circumstances have existed, the State Commission has often turned down development applications pending commencement or completion of local planning for the area. The approval of development in the absence of such planning would eliminate future planning options at both state and local levels, and would be inconsistent with orderly, balanced development.¹⁷⁰

This has been a particularly acute problem in the Marina del Rey area of Los Angeles. The marina itself, reputed to be the world's largest manmade marina, is a county project funded with public

169. It has been encouraging to witness permit hearings in which developers and environmentalists have agreed on what should be done, and how and where it should be done. The role of the commissions in the process has frequently been that of facilitators. Many observers have been pleasantly surprised to find how often the two sides can reach agreement after they have been forced to talk *to*, rather than *about*, each other. This is a significant but frequently overlooked aspect of public participation.

170. CAL. PUB. RES. CODE § 27302 (West Supp. 1975).

bonds. The development adjacent to and in the vicinity of the marina, however, is serviced by the City of Los Angeles. A continuing conflict between the two jurisdictions as to how marina development should proceed, together with poor county planning in the first instance, has brought high density and intensity uses into the area. The effect has been to exclude the general public from a recreational resource originally intended for public use.

The State Commission turned down nearly every development proposal in the Marina del Rey area until the completion of a local plan, pursuant to which development could be approved consistently with the requirements of the Coastal Act.¹⁷¹ This virtual moratorium on development prompted the two local governments, local home owners, developers, and area-based citizen groups to get together to work out an acceptable land use plan. The University of Southern California Sea Grant program provided technical expertise and other types of support. Relying on evolving Coastal Plan policies, this group completed an area plan for Marina del Rey in less than 6 months,¹⁷² an accomplishment particularly noteworthy because of the previous antagonism among the group participants.

One reason the commissions have been so concerned about the lack of local planning is that the cumulative impact of development is rarely taken into account. A local resource conservation and use plan is one way to promote orderly development while protecting coastal re-

171.

The Marina del Rey area—the marina itself, under Los Angeles County jurisdiction, and the surrounding lands within the City of Los Angeles—has rapidly developed. The attractions have been the marina itself, which is the largest man-made small-boat harbor in the world; the relatively clean coastal air; and the general amenities of this part of the coast. But along with development have come significant problems: public recreational open space is scarce; traffic congestion is severe (the Los Angeles City Traffic Department has said that “either the intensity of land development in the area should be limited to the capacity of the present transportation systems or additional traffic facilities should be provided”); slow-moving traffic adds to air pollution; and as a result of automotive congestion, public opportunities to reach and use the oceanfront are greatly reduced. Moreover, there is a question as to whether land near the marina itself should go for general office and commercial development, or should be reserved for such things as boat storage, boat service, and other purposes directly related to the marina. The Commission has denied several applications for general office, commercial, and residential construction in this area, because the cumulative effect of such construction can only aggravate existing problems, and to allow time for joint planning by the many public agencies and private interests involved to try to alleviate the present situation.

ANNUAL REPORT (1974), *supra* note 106, at 10. California Coastal Zone Conservation Comm’n, Minutes of Comm’n Meeting 7–9 (Nov. 19–20, 1974); California Coastal Zone Conservation Comm’n, Minutes of Comm’n Meeting 4–6 (March 6, 1974).

172. M. MCCOY & C. WALECKA, MARINA DEL REY SUBREGIONAL PLAN (Aug. 8, 1975).

sources. A project on Mission Bay at San Diego was not allowed to proceed because the findings required by the Coastal Act could not be made in the absence of a specific, enforceable conservation and development plan for the entire bay.¹⁷³ The State Commission approved an application for a large marina and related facilities on the condition that the City of San Diego first begin an environmental assessment and planning program. This planning is currently under way.¹⁷⁴ The same body denied a similar project on Glorietta Bay in San Diego County pending completion by the City of Coronado and the San Diego Unified Port District of a plan for future recreational uses of the bay.¹⁷⁵

In another case in San Diego involving expansion of a sewage treatment facility on Point Loma, permit approval was conditioned on commencement of planning for the area served by the expanded sewer system, and extensive citizen involvement in the system's design.¹⁷⁶ The system is intended to meet the needs of a population projected at 2 million and to deal with impacts generated by the continued growth of Tijuana across the border in Mexico. This local planning effort is now nearing completion. The proponent of a similar project in Orange County just north of San Diego has resisted any redesigning or citizen participation in the planning of its project. As a result, this project, though smaller than the San Diego project, has experienced greater delays and costs.¹⁷⁷

The commissions' experience with local planning during the permit process convinced them that such planning can be effectively accomplished if properly encouraged. This conviction set the stage for their final recommendation that primary responsibility for implementation of the Coastal Plan be delegated to local governments under coastal agency supervision.¹⁷⁸

2. *Conversion of Uses.*—California's coastal zone contains highly productive agricultural lands.¹⁷⁹ Coastal counties currently have about 3.5 million acres in agricultural use. Approximately 340,000 acres produce "coastal-related" crops.¹⁸⁰ Urban expansion has caused much

173. See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 12-13 (Nov. 28, 1973).

174. See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 2-3 (Feb. 6, 1974).

175. *Id.* at 15-17.

176. See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 9-11 (March 6, 1974).

177. See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 4-7 (June 20, 1973).

178. COASTAL PLAN 12.

179. *Id.* at 54.

180. *Id.*

of this important agricultural land—1 out of every 12 acres in the 1960's—to be converted to other uses. The Coastal Act provides special protection for agricultural lands by requiring a two-thirds vote for the approval of any development that may adversely affect agricultural lands.¹⁸¹ Mindful of increasing demands for food and the need to preserve planning options, to retain open lands, and to protect wildlife habitats, the State Commission has prevented the unnecessary conversion of productive coastal agricultural lands to other uses. It has done so despite many developers' arguments that they should be permitted to build because they cannot afford to maintain any agricultural uses on the land.¹⁸²

The commissions, in both their permit and planning work, have recognized agriculture as a significant coastal resource. The value of coastal specialty crops alone came to about \$1½ billion in 1969. Farming activities within 5 miles of the coast provide more than 350,000 jobs.¹⁸³ Production of food and fiber can continue year after year only so long as the resource base is maintained. In turning down a major residential project on agricultural land, the state body determined that it should not encourage the use of valuable coastal agricultural land for the creation of bedroom communities that could just as well be built in already urbanized areas or outside the coastal zone.¹⁸⁴ This decision was reviewed in California's largest newspaper:

A determination to protect agricultural lands along the California coast has now been adopted as policy . . . and it is an important and useful step.

....

. . . Maintenance of agricultural uses leaves all [planning] options open. Creation of new cities, erection of new buildings make more difficult the final decision on open space, recreation use, planning for the broad public good.

This policy decision . . . is further evidence of the careful and intelligent way the commission is carrying out its obligations under . . . Proposition 20¹⁸⁵

In another case, division of a 1,007 acre parcel of farm land was limited to four units, although the applicant wanted 12. Before al-

181. CAL. PUB. RES. CODE § 27401(e) (West Supp. 1975).

182. See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 2-4 (Dec. 19, 1973).

183. COASTAL PLAN 54.

184. See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 14-15 (July 18, 1973).

185. Los Angeles Times, Aug. 6, 1973, § II, at 6.

lowing the four-way split, the commission required dedication to an appropriate public agency of an open space easement over the entire acreage. The permitted split followed boundary lines established by past tenants who had farmed the four parts successfully. The commission thereby prevented the division of productive farm land into units too small to be economically viable.¹⁸⁶ In similar cases involving agricultural land, consideration was given to the inhibiting effect on non-agricultural uses of nearby farming practices, such as the spraying of pesticides.

The commissions have also tried to slow the conversion of existing coastal neighborhoods. Many of these are older residential neighborhoods, the residents of which come largely from low to moderate, or fixed income groups. Replacement of existing housing with modern apartments or condominium units forces the previous residents to move away. In addition to this displacement, the new housing usually is of higher density. As a result the carrying capacities of existing facilities and systems, such as roads and sewers, are often severely strained. Holding down the conversion rate allows more considered planning for the future of these neighborhoods.

3. *Public Access.*—The inadequacy of public access to the water's edge continues to be a major issue and is an important cause of the continuing public support for coastal zone management legislation. Submerged lands and tidelands, whether filled or not, are subject to the common law public trust that, in addition to retaining public commercial, navigational and fishing rights, includes public uses such as recreation and the preservation of wildlife habitats and open spaces.¹⁸⁷

186. See California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 7-8 (Oct. 1, 1975). The Commission's concern was that 12 parcels would be much more difficult to manage than four parcels. Each succeeding division of land would complicate efficient agricultural management. For example, tenant farmers would have to deal with several landowners who might not agree on the best economic use of the property. Also, if the recorded parcels did not match those leased by the tenant farmers, further divisions of the property might be required. Several benefits were envisioned by restricting the division of the land to four parcels. Larger, more efficient agricultural units would be retained, and the likelihood that parcels would be split off for development would be reduced. Limiting the future use of the property to agriculture would also assure the retention of the property's agricultural zoning, which would prevent the development of campsites and recreational vehicle parks that would be allowed under less restrictive zoning provisions. The open space easement was viewed as a way to insure direct enforcement of the use restrictions. It was also considered more permanent than the use of deed restrictions alone. See also California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 3-4 (Sept. 16-18, 1975); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 2-3 (Dec. 17-18, 1974).

187. *Marks v. Whitney*, 491 P.2d 374 (Cal. 1971). See also Taylor, *Patented Tidelands: A Naked Fee? Marks v. Whitney and the Public Trust Easement*, 47 CALIF. ST. B.J. 421 (1972).

The public trust doctrine, constitutional protections of public access to navigable waters,¹⁸⁸ and the Coastal Act's own emphasis on protecting public access to the shoreline have, in combination, made the maximization of public access one of the commissions' principal goals. If the dedication of some form of public access is reasonable, the commissions have not hesitated to require it.¹⁸⁹

Access means many things, including the ability to see the coastline, to live near it, to get to it, to park near it, and the affording of recreational facilities. The more difficult problems involve efforts to obtain access through private subdivisions developed prior to Proposition 20. When the developer is before the commission, dedication can be required. But when an individual lot owner is involved, the most realistic approach may be public acquisition. Even when only a lot owner is before the commission, the imposition of overall conditions on the entire subdivision may work if the subdivision developer is cooperative.

4. Recreational Opportunities.—Among the most important resources of the coast is its use and potential for recreation. California's coast offers a wide variety of recreational opportunities, including swimming, fishing, boating, skin diving, surfing, hiking, sunbathing, picnicking, camping, riding, sightseeing, and many other uses soothing to body and soul. The coast's many tide pools, sand dunes, marshes, and estuaries provide a rich laboratory for the education of the young and the not so young. The importance of protecting coastal recreational opportunities is underscored by the requirement that any development that would reduce the size of any "area usable for public recreation" must be approved by a two-thirds vote of the total authorized membership of a commission.¹⁹⁰ This standard has been applied to private property that is currently being used for recreation, that is being considered for public purchase, or that is particularly well suited for potential recreational uses.

An interesting case raising many major issues and conflicts inherent in coastal resource planning and management dealt with a proposal to provide facilities for recreational vehicles at a location just north of Los Angeles. The developer wanted to construct a 200-space recreational vehicle park on 18.9 acres. The State Commission approved the project after deleting 75 vehicle spaces and replacing them with areas for tent camping, hiking trails, and picnicking. The Commission stated:

188. CAL. CONST. art. XV, § 2.

189. See Healy, *supra* note 74, at 372.

190. CAL. PUB. RES. CODE § 27401(b) (West Supp. 1975).

This appeal poses one of the most important policy questions yet to come before the Commission: should uses of land in the coastal zone that can benefit many people have preference over uses that benefit a few? Or, more precisely, when a piece of land is not proposed for public acquisition and is thus almost certain to be developed, should it be used for housing of benefit primarily to the residents of the housing—or should encouragement be given to vacation or similarly temporary uses, such as resorts, hotels, rental units, and recreational vehicle parks, that will allow many more people to enjoy the amenities of the coastal zone? Although this question will be more fully explored in the Commission's planning, it appears entirely consistent with that planning to make clear, at least tentatively, a preference for land uses that will allow the most people to enjoy the coastal zone. This is particularly important because, in many areas of the coastal zone, the costs of housing are already high and still rising. Many Californians who will wish to use and enjoy the coastal zone may not be able to afford to live permanently in it. Thus, landowners and developers should be encouraged to provide increasing opportunities for Californians of all levels of income to enjoy coastal areas.¹⁹¹

5. *Industrial Uses.*—Among the most controversial development proposals are those involving industrial uses which proponents say will provide jobs, energy, and economic growth. In approving a Los Angeles Harbor expansion project, the State Commission concluded that “[p]ort facilities are obviously water-related and are a proper and important use of coastal zone resources.”¹⁹² This case established precedent for holding that an industrial use on the coast is proper if that use is dependent on a coastal location.

In several decisions involving industrial uses, an interesting theme appears, demonstrating quite dramatically that Proposition 20 is a strong environmental protection law as well as a coastal planning program. These cases illustrate a point often missed by the casual observer: in their deliberations on permit applications the commissions do not have flexibility to balance economic and energy needs against adverse environmental impacts. The Act's permit standards are quite explicit and do not appear to allow traditional trade-offs. Despite these rigid standards, the State Commission has in fact weighed factors on a number of occasions. In one case, a freeway extension in

191. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 7 (Nov. 28, 1973). See also California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 13-14 (Oct. 17, 1973).

192. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 11 (July 5, 1973).

Monterey County was approved even though the project would eliminate prime agricultural lands, cut deeply into a significant coastal sand dune formation, and endanger a series of wildlife habitats.¹⁹³ The Commission concluded that substantial adverse environmental impact would result if the Commission denied the project and required the use of an alternate inland route. In effect, the Commission decided that the adverse environmental effects of a denial would be greater than those of approval. At that point, meeting the Coastal Act's standards became even more difficult. The necessary finding that the proposed development would not have any substantial adverse environmental effect could not have been made at that time. To justify approval, the Commission concluded that if certain conditions were accomplished, adverse impacts would be mitigated, and at that point in the future, the findings required by the Act could be made.

A similar case involved expansion of a fossil fuel electric generating plant on Terminal Island in Los Angeles harbor.¹⁹⁴ The applicant could not show that its development would not have any substantial adverse impact on the harbor's marine life. The State Commission approved the permit subject to a number of stringent conditions, even though it could not make the findings required by Proposition 20. The conditions relate to air quality, and also require that a marine study and monitoring program be undertaken at the applicant's expense. If the marine study shows adverse effects, the applicant has agreed to take corrective steps, including construction of a multi-million dollar cooling tower. Again the Commission based its approval on a finding which it assumed could be made at some point in the future and after a number of events (the completion of the marine studies and the institution of corrective measures) have occurred.

In these cases a balancing of environmental impacts occurred. Adverse environmental effects of a permit *denial* were factored into the determination of whether approval, subject to conditions, should be granted. In the freeway case, an alternate route would have had even greater adverse environmental consequences inland of the permit area. Denial of the Terminal Island power plant expansion would, it was argued, result in increased reliance on existing power plants which discharge greater quantities of pollutants into the air than would the proposed expansion unit. Neither decision was appealed to the courts.

A third case did not initially lend itself to the solutions used in

193. *Id.* at 21-23.

194. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 2-10 (Aug. 8, 1973); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 15-18. (July 18, 1973).

the above cases. It involved expansion of the San Onofre nuclear generating facility on the northern coast of San Diego County.¹⁹⁵ Construction of the \$1.4 billion project would have included excavation and removal of 52 acres of unusual bluffs and canyons. Over a half mile of beach would have been lost. The enormous quantities of sea water needed for the facility's cooling system could, in the words of the State Commission's staff, have caused "several square miles of coastal waters to become the equivalent of a marine desert."¹⁹⁶ The applicants argued that energy needs in Southern California necessitated swift approval and that denial would cause increased reliance on fossil fuel plants, resulting in greater air pollution and the use of an additional 25 million barrels of oil per year. The project's proponents, having previously secured all other necessary governmental approvals (including that of the Atomic Energy Commission), refused to consider modifications of their plans suggested by the State Commission's staff. The Commission voted 6-to-5 to approve the project. Since a two-thirds majority was required, however, the vote fell two short. The staff, in an extensive report, had recommended denial of the facility as proposed, but had emphasized that alternatives existed which could have assured both adequate supplies of energy and a healthy environment.

Predictably, the furor raised by the San Onofre denial reached almost hysterical proportions. A deputy to national energy chief William Simon, a number of major press editorials, Governor Reagan and other politicians, chambers of commerce, and city councils, among others, implored the State Commission to approve the expansion of San Onofre. In almost every communication the energy crisis was cited as a reason.¹⁹⁷ The Commission, however, had little choice. The project, if approved as proposed, would have had a substantial adverse environmental effect which could not have been outweighed by possible adverse effects of a denial. San Onofre provided a dramatic illustration of the importance of the Act's procedural provisions and of how they work. These provisions include the two-thirds vote requirement, the burden of proof, the affirmative finding provision, the Act's permit test which does not allow balancing economic and energy need factors against environmental effects, and the conflict of interest provisions.¹⁹⁸

195. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 7-19 (Feb. 20, 1974); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 2-9 (Jan. 9, 1974); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 1-21 (Dec. 5, 1973); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 1-19 (Oct. 18, 1973).

196. California Coastal Zone Conservation Comm'n, Staff Recommendation on Appeal No. 183-73 (San Onofre) (1973).

197. All these communications are on file with the State Commission in San Francisco.

198. Prior to the vote, five of 11 commissioners present disclosed financial relation-

San Onofre marked a pivotal point in the short life of California's coastal management program. Intense pressures were brought to bear on individual commissioners. Shortly after the initial vote, the applicants agreed to modify their plans in order to bring the project within the requirements of the Act. They also went to court. About one month later, a legal stipulation was agreed upon whereby the court remanded the matter to the State Commission.¹⁹⁹ The proper action under the Act would have been to file a new application with the *regional* commission, just as any other applicant would. But this legal gimmick brought the case directly back to the State Commission and enabled it to vote again. This time, however, the project had been modified. In late 1974, the expansion of San Onofre was approved, subject to conditions which were stronger than the State Commission's staff had recommended and which were the toughest imposed by any state on an AEC-approved nuclear power plant.²⁰⁰

The State Commission, in approving the San Onofre project, recognized that the project would have impacts on air, water, and land. San Onofre will have a beneficial effect on air quality. The impact on the marine environment is not known, but a marine study will provide answers. Conditions relative to the bluffs and beach are designed to reduce adverse effects on land use. The adverse effects of denial of the permit on air quality in Southern California have already been factored into the decision to approve the project. The State Commission, however, did not put off issuing a permit until the necessary findings were made but concluded that the Coastal Act's requirements were met with the imposition of the conditions attached to the project.

6. Public Agency Projects.—Public agency development projects are among the more complex cases dealt with by the commissions. These include major urban redevelopment projects, harbor improvements, water and sewer projects, highways, park developments, and waste treatment facilities. These cases pit agency against agency and often involve sizeable commitments of public funds. Three such cases involved redevelopment projects which had been planned and had commenced before Proposition 20 passed.²⁰¹ Regional commission ap-

ships to the applicant. With regard to each disclosure, the Commission voted, as required by the Act, on whether the individual commissioner's vote on the matter would adversely affect the integrity of the Commission. CAL. PUB. RES. CODE § 27232 (West Supp. 1975).

199. Stipulation for Entry of Interlocutory Judgment, San Diego Gas & Elec. Co. v. California Coastal Zone Conservation Comm'n, No. 349247. (San Diego Super. Ct.).

200. Los Angeles Times, Feb. 21, 1974, § I, at 30, col. 1.

201. A number of public agencies attempted to obtain exemptions from the Act's

proval of a redevelopment project in the historical area of Monterey was appealed on the ground that the project's bulk (a conference center, theater, hotel, garage complex, and related facilities were planned) would have a drastic and detrimental impact on the character of Monterey.²⁰² The project was approved by the State Commission after the Monterey Redevelopment Agency agreed to redesign the project to make it compatible with adjacent historic areas. A number of facilities were deleted and the project's size was significantly scaled down. Another redevelopment project adjacent to a lake and a lagoon was approved after the city applicant agreed to delete or relocate commercial development.²⁰³ The State Commission stated that commercial uses in that area would be inappropriate. The city also agreed to provide additional open space and public access to the two bodies of water adjoining the project.

A third project involved the Santa Monica Redevelopment Agency as a party to an agreement with the developer-applicant.²⁰⁴ When the applicant refused to alter his plans because he felt that agreements with the Department of Housing and Urban Development could not be changed, the project, a 639-unit apartment-condominium complex on a 10-acre site near the Venice area of Los Angeles, was disapproved at the regional level. On appeal, the permit was refused because the project lacked sufficient public open space, provided inadequate parking facilities, and did not include any low-cost housing. The State Commission recognized that it should require no less from a developer whose project is subsidized with public funds than had been required of private developers. Subsequently, the city council, sitting as the redevelopment agency, began a reevaluation of the project. Sometime later, the city bought the developer's rights. A new project was proposed entirely for low income persons, and it has been approved by the commissions.

Other public agency cases that defined coastal planning and management directions dealt with water and sewer system projects. The

permit provisions on the ground that their projects were well under way at the time Proposition 20 passed. Most of these claims were denied. See note 126 and accompanying text *supra*.

202. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 5-7 (Nov. 7, 1973); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 20-21 (Aug. 1, 1973).

203. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 5-6 (Nov. 28, 1973); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 6-8 (Oct. 3, 1973); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 13 (Sept. 6, 1973).

204. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 9-12 (Nov. 28, 1973); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 10-15 (Nov. 7, 1973).

Aliso Water Management Agency of Orange County received a permit for a waste treatment system from the regional commission subject to water quality standards more stringent than those set by the State Water Resources Control Board.²⁰⁵ The reasons for the tougher standards were described by one regional commissioner:

The point of departure from the usual water quality standards was reached on the basis of the passage of Proposition 20. One of the goals of the [Act] is to see that populations of marine organisms be restored, if they can be. Waste waters should now be treated to a condition where they can *enhance* the productivity of the [receiving] waters. It can be done and now it should be done. That is the rationale behind [these] water quality criteria.²⁰⁶

This requirement was adopted by the State Commission on appeal. It, however, imposed an additional condition limiting total capacity of the treatment system to that reasonably necessary to accommodate a permanent population of approximately 174,000 by the year 2000. The applicant had designed the system to accommodate a population of 230,000. State and federal air pollution control agencies favored the lower population figure because the area constituted a critically impacted air pollution area. In limiting the system's capacity, the State Commission noted that new waste treatment facilities are growth inducing and could have the unintended result of increasing air pollution in an area which already has a severe smog problem.²⁰⁷ Although only a small portion of the project (the ocean outfall and connecting pipes) was in the permit area, the Commission concluded that it could and should consider development effects beyond the 1,000-yard permit area but within the 5-mile coastal zone. In support of this position it pointed to the specific requirement in Proposition 20 that proposed development be consistent with the Act's objectives, including "the maintenance, restoration, and enhancement of the *overall quality* of the coastal zone environment."²⁰⁸

Other public agency projects have also experienced tough treatment under the Act. An application by the State Division of Highways for a series of pedestrian overcrossings, described as looking like "coal shutes," was denied by the State Commission. The crossings were re-

205. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 4-7 (June 20, 1973); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 19-20 (June 6, 1973).

206. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 7 (June 20, 1973) (emphasis added).

207. *Id.* at 4.

208. CAL. PUB. RES. CODE §§ 27402(b), 27302(a) (West Supp. 1975) (emphasis added).

designed in order to be more esthetically pleasing. The Department of Parks and Recreation was denied a permit to develop beach facilities for overnight recreational vehicle uses on the grounds that day use of the site would be preferable, that parking problems might result, and that sandy beach areas should not be artificially surfaced for recreational vehicle hookups.²⁰⁹

In denying a permit for the expansion of San Diego's airport (Lindbergh Field), the State Commission appears to have promulgated a policy of tolerating adverse environmental consequences generated by public service facilities if it can be shown that the facilities are needed.²¹⁰

7. *Protection of Wetlands.*—The State Commission has, whenever possible, required the restoration of degraded marsh areas.²¹¹ If a proposed development could adversely affect wetlands, the Commission has either turned down the permit or required major modifications.²¹²

8. *Other Issues.*—Although the major coastal management issues were intended to be dealt with in the Plan, interim permit controls forced the commissions to address them much earlier in the process. Early in the program the State Commission on several occasions expressed concern about the need to provide low and moderate cost housing in the coastal zone.²¹³ After gaining experience and setting some policies on this issue, it decided that over half the rental units in a particular development should be reserved for the elderly. As a trade-off the developer was allowed a physical project design with greater lot coverage than the commission had permitted in a neighboring development. Although this resulted in a reduction of internal open space, it also created single-story structures that made the project more attractive to elderly residents. The developer was also required to provide by appropriate deed restrictions a fixed level of rent within the means of many elderly persons. Since the project was designed to accommodate a particular social group, the State Commission wanted to assure that later changes in use would not occur which would place

209. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 8-9 (Jan. 23, 1974).

210. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 12-15 (Aug. 19-21, 1975).

211. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 7-9 (July 29-30, 1975); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 2-3 (March 25-26, 1975).

212. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 7-9 (June 3-4, 1975); California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 15-16 (April 8-9, 1975).

213. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 9 (Nov. 28, 1973); California Coastal Zone Conservation Comm'n Meeting, Minutes of Comm'n Meeting 20 (July 5, 1973).

more recreational demands on the project than it could serve. This would take place, for example, if younger persons were to move into some units and become a large proportion of the tenants. Fixing the rent level was considered necessary to prevent it from rising beyond the means of many of the elderly for whose use this project was approved. The site design for the project was made to fit in with three other projects on a 90-acre bluff area of Orange County. The State Commission had previously required the preparation by all three of the other land owners of a balanced, coordinated plan to avoid overburdening the resources in the area.²¹⁴ The completed plan eliminated excess roads, reduced residential densities, and provided significant public open space, including a 4-acre park with a linked trail system.

214. California Coastal Zone Conservation Comm'n, Minutes of Comm'n Meeting 7-8 (Nov. 7, 1973).